



Environmental protection through criminal law: the case study of Lithuania

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for the degree of
MASTER OF SCIENCE
May 2010

A thesis submitted in partial fulfillment of the requirements of Lund University International Master's Programme in Environmental Studies and Sustainability Science (LUMES)

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List of abbreviations

BRÅ - the Swedish National Council for Crime Prevention. [Brottsförebyggande rådet].

IRD - Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania. [Informatikos ir Ryšių Departamentas prie Vidaus Reikalų Ministerijos].

LRGP – Prosecution Service of the Republic of Lithuania. [Lietuvos Respublikos Generalinė Prokuratūra].

NTA - The National Court Administration of the Republic of Lithuania. [Nacionalinė Teismų Administracija].

OECD – Organisation for Economic Cooperation and Development.

VAAI - The State Environmental Protection Inspectorate under the Ministry of Environment. [Valstybinė Aplinkos Apsaugos Inspekcija].

Acknowledgements

My sincerest thanks go to my supervisor, Carl Dalhammar, for his helpful comments, enthusiasm and support shown to me in these past months.

I would also like to thank to a great number of people in various Lithuanian institutions, for providing me with information and devoting their time for interviews. I am especially grateful to interviewees D. Balandis and V. Jankoit for their great contribution to the study.

Very special thanks to my family for giving me an opportunity to study here in Lund and their continuous support and encouragement during these two years.

My thanks and appreciation also goes to all of my friends for their care and friendship.

Finally, I would like to express my thanks to all the teachers and staff at LUMES, as well as my classmates. Thanks to all for a great 2 years!

Thesis abstract

Environmental crime is considered to be a serious and growing international problem challenging the authorities tasked with combating it. Despite the gravity of threat environmental crimes pose to the environment and humans, often such crimes fail to urge an appropriate response from governments and enforcement community.

This study aims to reveal the underlying causes for the weak enforcement of environmental criminal law in Lithuania by using the Theory of Rational Choice and Deterrence. Effective performance of each component in the enforcement 'chain' is a key factor in ensuring the certainty, severity and swiftness of the punishment and therefore, deterrence against criminal activity. The researcher focuses on the factors impeding effective institutional performance in accomplishing those key elements during the first two stages of the criminal procedure.

Data gathered through the qualitative approach confirmed the existence of numerous weaknesses connected to criminal enforcement of environmental regulations in Lithuania. The findings suggest that deficiencies in the laws and other regulations, a lack of expertise and experience, scarcity of special equipment, inadequate budgetary and human resources, and poor interagency cooperation are the key factors contributing to a low quality of criminal enforcement of environmental law in the country.

Key words: environmental crime, environmental criminal law, criminal enforcement of environmental law, deterrence.

I. Introduction

*'Global warming, oil spills, massive numbers of extinctions, reduction in bio-diversity, toxic environments, disappearance of Arctic ice, poisonous water, unbreathable air, burning of garbage, clear felling of forests, the list goes on as to how planetary well-being is being destroyed and diminished in so many different ways.'*¹

Environmental issues have generated considerable public interest in recent years. Various economic and legal instruments were put in place aiming to ensure that environmental regulations are complied with, and therefore environmental protection objectives are achieved.

However, environmental crime rates are believed to be expanding, constantly generating enormous revenues and causing irreversible destruction to the global environment.² 'Environmental crimes can be broadly defined as illegal acts which directly harm the environment.'³ They include acts or omissions related to illegal taking of flora and fauna, pollution offences and transportation of banned substances.⁴

It is not easy to estimate the significance of environmental damage caused by criminal activity. However, it is widely agreed that this type of crime not only damages the eco-system, but also impoverishes so many countries where pollution, deforestation and population displacement trigger conflict and prevent reaching the Millennium Development Goals.⁵ Moreover, a number of authors argue that due to the complicated nature of environmental harms it is almost impossible to envisage the true effects and consequences not only for present but also for future generations.⁶ Therefore, the spread of environmental crimes undermines the global efforts to achieve the development that 'meets the needs of the present without compromising the ability of future generations to meet their own needs'⁷. As Comte expressively states, 'the environmental crime carries with it the survival of human species'⁸. 'Until environmental crime is taken seriously by governments and viewed on a par with other forms of serious trans-national organized crime, the plunder will continue damaging biodiversity, threatening species with extinction, stealing from local and national economies, perpetuating corruption and undermining global efforts at sustainable development.'⁹

Therefore, around the year 1970 – 1980 the social debate over the application of criminal law as a mean of compliance to the environmental regulations has been raised. The growing numbers

¹ White, R.(2009). *Introduction: Environmental Crime and Eco-global Criminology*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. (p.p 1-8). UK, Willan Publishing. p. 1.

² Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. European environmental law review. 15 (7) p.p.190-231.

³ Environmental Investigation Agency. (2008). *Environmental Crime: A Threat to Our Future*. Retrieved May 18, 2010 from http://www.unodc.org/documents/NGO/EIA_Ecocrime_report_0908_final_draft_low.pdf . p.1.

⁴ Heckenberg, D.(2009). *Studying Environmental Crime: Key Words, Acronyms and Sources of Information*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. (p.p 9-24). UK, Willan Publishing. p. 12.

⁵ Costa, A.M. as quoted in Environmental Investigation Agency. (2008). *Environmental Crime: A Threat to Our Future*. p.4.

⁶ Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p. 196.

⁷ Report of the World Commission on Environment and Development: Our Common Future. (1987). A/42/427. Retrieved May 8, 2010 from <http://www.un-documents.net/wced-ocf.htm>

⁸ Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p. 196.

⁹ Environmental Investigation Agency. (2008). *Environmental Crime: A Threat to Our Future*. p.21.

of ‘environmental scandals’¹⁰ impelled criminologists and other social scientists to turn their attention on how to best define and respond to environmental criminal activities.¹¹

However, despite the expansion of scholarly interest and public concern, tackling the environmental crime has been and still remains a rather marginalized phenomenon on political agendas.¹² Many authors emphasize the progress in criminalizing the environmental offences ‘on paper’; however, the enforcement question still remains problematic. The complicated nature of environmental crimes, as well as the quite recent establishment of the concept itself, has led to many barriers inhibiting the enforcement process across the world. The common issues such as comparative infrequency of cases coming before the courts, fairly slow criminal procedure as well as relatively mild sentences for environmental criminal activities threatens the criminal law not to be able to fulfill its goals. One could say that maybe relatively low rates of criminal prosecution is a sign of high compliance to environmental regulations; yet the author supports another version, which claims that environmental crimes can be referred to as the type of crimes that are highly unreported or undiscovered by the institutions responsible for criminal enforcement.¹³

As Nobel Peace Prize Laureate Wangari Maathai perceptively remarks, ‘compliance is part of good governance...without that, you cannot have sustainable development.’¹⁴ Criminal enforcement is one of the means to ensure compliance with various regulations by using or threatening to use the most serious sanctions. Criminal enforcement is of course not the only legal mean for controlling environmentally hazardous activities. There are several enforcement regimes aiming to deter illegal behavior and thus prevent environmental damage from occurring. The best case scenario is if all of the regimes function in harmony and ensure the highest compliance. To achieve that, the obstacles impeding the functioning of each of them have to be addressed and fully understood. Therefore, this study is focusing on criminal enforcement of environmental law.

1.1. Environmental crime in the European Union

Environmental protection is one of the prior areas of the European Union’s (EU) policy. EU authorities accent that environmental crime is a serious and growing international problem that has devastating effects on environment and human health and that undermines the successful implementation of the EU environmental policy; thus, it must be ensured that such offences are subject to effective sanctions, including, in serious cases, criminal sanctions.¹⁵

However, the studies¹⁶ conducted in all EU Member and Candidate States in 2003-2004 have unfortunately indicated significant differences regarding the levels of sanctions applied to

¹⁰ Mårald, E. (2001). *The BT Kemi Scandal and the Establishment of the Environmental Crime Concept*. Journal in Scandinavian Studies in Criminology and Crime Prevention. Vol.2. p.p. 149-170.

¹¹ White, R. (2005). *Environmental Crime in Global Context: Exploring the Theoretical and Empirical Complexities*. In White, R. (Ed.) (2009). *Environmental Crime: A Reader*. (p.p 278-293). UK, Willan Publishing. p. 278.

¹² Mårald, E. (2001). *The BT Kemi Scandal and the Establishment of the Environmental Crime Concept*.

¹³ Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p. 197.

¹⁴ Environmental Investigation Agency. (2008). *Environmental Crime: A Threat to Our Future*. p.3.

¹⁵ ‘Europa’ Press Releases. (2007). *Questions and Answers on the protection of the environment through criminal law*. MEMO/07/50.

¹⁶ Studies retrieved from http://ec.europa.eu/environment/legal/crime/studies_en.htm

the same offences in different States and therefore, creating the perfect situation for offenders to exploit the existing differences between Member State's legislation to their advantage.¹⁷ The poor efforts made by the national authorities have drawn the greater EU institutions' attention towards the issue. The debates on application of criminal sanctions for environmental law violations in the European Union started almost 10 years ago and were finalized in 2008 with adaptation of the *Directive on environmental protection through criminal law*¹⁸, which has to be transposed by Member States by the end of this year.

However, the effectiveness of EU environmental policy is highly determined by its implementation and enforcement at the national level. Since implementation and enforcement are the tasks dedicated to Member States' authorities, every state is required to find the best ways of ensuring that the Directive is being followed efficiently ensuring the effective, dissuasive and proportionate criminal penalties for the activities¹⁹ seriously damaging the environment. Nevertheless, EU authorities agree that development of effective criminal enforcement strategies is a complex and time consuming task; therefore, in order to complete it comprehensively, the national authorities are responsible for examining potential barriers undermining the successful enforcement performance.

1.2. Research objectives

As mentioned previously, all EU Member States are tasked with strengthening the criminal enforcement of environmental law at the national level. Lithuania is no exception. The scarcity of the research on the environmental criminal enforcement topic in the country calls for the need of further researches in the area that is considered to be a challenge in most of the countries.

Lithuanian Report to the European Commission²⁰ in 2003 indicated numerous institutional issues connected to environmental criminal law enforcement. It concluded that the criminal sanctions for environmental offences in the year 2003 and before were applied on a very rare occasions.²¹ Unfortunately, the current statistical data on the frequency and speed of the environmental criminal procedure, as well as the severity of sanctions for environmental crimes in Lithuania, still seem to indicate the existence of possible barriers to the successful functioning of environmental criminal enforcement institutions. However, any conclusions without an in-depth analysis cannot be made. Therefore, the study is aiming to explore whether there are barriers in the environmental criminal law enforcement system in Lithuania and if yes, the aim is to name them as well as to find the possible causes of them. Moreover, the study aims to provide with the recommendations that could possibly improve the enforcement performance. The author believes that the results of the study might inform policy makers about the existing barriers in the

¹⁷ The European Commission. (2007). *Explanatory memorandum for the proposal for a directive on the protection of the environment through criminal law*. 2007/0022 (COD)

¹⁸ The European Parliament and the European Council Directive 2008/99/EC of 19 November 2008 on the Protection of the Environment through Criminal Law. Official Journal L 328 , 06/12/2008 P. 0028 – 0037.

¹⁹ See Article no.3 of the Directive 2008/99/EC of the European Parliament and of the Council.

²⁰ Balandis, D. (2004). *Study on measures other than criminal ones in cases where environmental community law has not been respected in a few candidate countries. National Report Lithuania*. For the European Commission (DG Environment). Contract no. B4-3040/2003/369100/MAR/A.3 Retrieved October 23, 2009 from http://ec.europa.eu/environment/legal/crime/studies_en.htm

²¹ Ibid.

environmental criminal law enforcement system as well as provide them with some valuable insights for shaping more effective environmental law enforcement strategies.

The main research questions are:

1. Are there any barriers impeding the criminal enforcement of environmental laws in Lithuania? If yes, what are the main barriers and what are their causes?
2. What measures have been taken to overcome the barriers?
3. What could contribute to the more effective enforcement of environmental criminal law?

II. Analytical framework

2.1. Single-case study

A single case study design has been chosen due to the fact that the problems in law enforcement may vary in different contexts. The barriers may resemble each other in different countries, especially with the similar political, historical or other contexts; however by taking an in-depth exploration of the issues in one particular country, policy makers may be able to develop more appropriate solutions for that country in focus.

2.2. Qualitative research

The author believes that in order to reveal barriers experienced by environmental law enforcement institutions in Lithuania it is important not only to examine the deficiencies in existing legal tools, but also to explore how the officials involved in criminal enforcement of environmental law frames and understands them. This calls for a qualitative research approach which emphasizes understanding of the social world through an exploration of the interpretation of that world by its participants.²² Such an approach makes it necessary to pay attention to both of the following: available legal tools and the context where law is interpreted and implemented. In order to answer the research questions, the study has incorporated two research methods: literature review and interviews.

2.3 Research progress

2.3.1. Literature review

To begin with, the first stage of the research process was identification and analysis of available literature, which included the reading of academic articles, independent research documents, studies on environmental crimes in the European Union²³ and handbooks on criminal law, criminology and public administration. Moreover, the first stage also included the

²² Bryman, A. (2008). *Social Research methods*, Oxford: Oxford University Press. p. 366.

²³ Retrieved from http://ec.europa.eu/environment/legal/crime/studies_en.htm

examination of official documents derived from the state such as laws, acts of government, official reports made by various authorities, and official statistics. The statistics on environmental crimes, their prosecutions and convictions in Lithuania and other countries was gathered through personal research in official websites or contacting relevant institutions by emails or telephone. (Even though the study is not comparative, the author was aiming to look to the situation in Lithuania through the wider perspective.)

2.3.2. Selection of the respondents

During the second stage the researcher was selecting the relevant respondents for the interviews as well as formulating the questions that would help to reveal the existing barriers in terms of environmental criminal law enforcement in Lithuania. A *Purposive sampling*²⁴ technique was used, because it was important to select interviewees who are in some way connected or involved in environmental criminal law application. The respondents were identified according to their occupation and expertise in the area. The selection of respondents was based on personal research and recommendations.

The main aim was to find the respondents from the following institutions: (1) The Ministry of the Environment; (2) The State Environmental Protection Inspectorate under the Ministry of Environment; (3) Regional Environmental Protection Departments and their subordinated Local Environmental Protection Agencies; (4) Prosecutor office; (5) Courts of General Competence.

Moreover, even though the study is focusing on the barriers to enforcement, the researcher found it important to see whether the officials that are involved in legislation are aware of the issues in enforcement and what actions have been taken. Therefore, representatives from Parliament Committee of Environmental Protection, Ministry of Environment and Law Institute were also selected.

Additionally, some respondents that are not directly involved in legislation or enforcement of environmental criminal laws but whose expertise in the environmental protection field was believed to contribute to the study were selected. On the basis of the recommendations, the respondents from other countries were also involved in the study.

The questions were created based on analysis of the literature explored in the first stage as well as on the useful insights after the previous interviews. (see Annex 1.)

2.3.3. Interview process

The third stage of the research was the interviewing. The main aim for including the empirical section was to analyze the barriers in the particular context (Lithuania) and relate the findings to the issues identified during the literature review.

The potential respondents were first contacted by email that shortly presented the researcher and the study. Upon expressing the willingness to participate in the study they were sent the short introduction, project objective and interview guide. The selection of potential

²⁴ Bryman, A. (2008). *Social Research methods*. p. 458.

respondents within the institutions was based on the following: firstly, the heads of the relevant departments were inquired (the results demonstrate that this technique has worked due the fact that in case of non-willingness to participate the heads of the departments tend to assign the task to their employees). Additionally, the selection of respondent within the institutions was also based on the recommendations of emailed or interviewed officials. (Therefore, snowball sampling²⁵ technique was also used in the study, because the initial contacts guided or even helped to establish contacts with others.)

From around 70 people being contacted, at the end of the field work I had 20 full responses to the questionnaires. (see Annex 2.) 11 of them were respondents from the institutions directly involved in environmental criminal law legislation and application; meanwhile 9 of them were so to call 'side respondents' - respondents that are not directly involved into implementation of environmental criminal law, but whose ideas were seen as a valuable contribution to the study.

The interviews were conducted in 3 ways: face-to-face, by telephone or by email. The choice was given to the respondents; however, face-to-face or telephone interviews were encouraged. *Semi-structured*²⁶ interviews has been chosen for the study because this method ensures flexibility and puts an emphasis on understanding how the interviewee frames, understands and explains issues and events.²⁷ The telephone and face-to-face interviews lasted between 15 minutes and 1 hour. Within the respondents who preferred written questionnaires, the *online personal interviewing technique*²⁸ was used.

2.3.4. Limitations

To begin with, time constraints of interviewed meant that the depth of interviews were limited. This was also influenced by the fact that questionnaires were qualitative and demanded a reasonable amount of time for answering them. Moreover 12 interviews were conducted using the personal online interview technique. This type of interviewing has not ensured high level of flexibility, however, the fact that the interviewer can go back to the interviewees for the clarifications or further information ensures a certain level of flexibility.

Furthermore, the sample is not representative, although achieving representative sample was not the aim. Since the study is qualitative, the aim was to collect the thoughts of the respondents who are able to make relevant comments due to their being experts or at least having certain knowledge in environmental criminal law field. Moreover, the limitation was also that it was particularly complicated to find the 'real' experts in the field of environmental criminal law implementation because of the relatively low numbers of environmental criminal cases. Therefore, the inquired respondents were afraid that they would not be competent enough to answer the questions. So, the researcher presumes that this was one of the reasons for the rather low response rates.

²⁵ Bryman, A. (2008). *Social Research methods*. p. 184.

²⁶ *Ibid.*, p. 438.

²⁷ *Ibid.*, p. 438.

²⁸ *Ibid.*, p. 642.

Moreover, the statistical data on environmental crimes, their prosecutions and convictions as well as the documents on the legal procedure are not easily found. However, many authors indicate the significant improvement since the year 2003 when the last report for the European Commission was made.

Additionally, the difficulty in accessing the statistical data from other countries is also one of the limitations. Even though the institutions administering the statistical data in various countries have expressed the willingness to cooperate, but it seems that the statistics on environmental criminal procedure is still rather unorganized in a number of countries.

III. Environmental crime

To begin with, crime is a wrongdoing which seriously threatens the security or well-being of the society.²⁹ Since the conceptualization of crime is an ambiguous and contentious task in itself already, many criminologists emphasize that the relatively new field – ‘environmental crime’ - has to be viewed as a topic requiring concentrated analytic and practical attention³⁰. The concern was raised due the fact that unfortunately under the dominating anthropocentric paradigm the protection of the natural environment is seen as the secondary aim after facilitation of human benefits. Therefore, most often the exploitation of natural environment is not seen as an immoral activity and collaboration with rather than prosecution of the ‘exploiters’ is being practiced. Therefore, ecologically, the collective impact of the anthropocentric philosophy is leading to the global destruction of non-human ecosystems, with potentially disastrous consequences for humans and non-humans alike.³¹ However, as mentioned before and will be analyzed later, the criminalization of environmental offences unfortunately is a very complex and time demanding task which is posing many challenges to the authorities tasked with dealing with it.

There is no universal definition stating which act is environmental crime which is not. According to Heckenberg:

‘Environmental crime refers to the environmental harms that are deemed to be illegal according to the law. These include acts or omissions related to illegal taking of flora and fauna, pollution offences and transportation of banned substances.’³²

Clifford also states that an environmental crime ‘is any act that violates an environmental protection law’³³. The most obvious way for lawyers to define environmental crime is to only

²⁹ Legal Duties as quoted in Smith, J.C. and Hogan, B. (2003). *Criminal Law*. UK, Lexis Nexis Butterworths. p.16.

³⁰ Williams, C.; Halsey, M.; South, N. as quoted in White, R. (2003). *Environmental Issues and the Criminological Imagination*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. (p.p 63-84). UK, Willan Publishing.

³¹ Hasley, M. and White, R. (1998). *Crime, Ecophilosophy and Environmental Harm*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. (p.p 27-50). UK, Willan Publishing.

³² Heckenberg, D.(2009). *Studying Environmental Crime: Key Words, Acronyms and Sources of Information*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p. 9.

³³ Clifford, M. (1998) as quoted in Law Library - American Law and Legal Information. *Environmental Crime - Defining Environmental Crime*. Retrieved March 12, 2010 from <http://law.jrank.org/pages/11964/Environmental-Crime-Defining-environmental-crime.html>

include those actions or omissions which damage the environment and which are forbidden by law; this has the advantage of being value free and objective.³⁴

The previously presented definitions emphasize the element of ‘being forbidden by laws’. However, there exist other definitions that describe environmental crimes as the acts that lead to environmental degradation. Yet, the definitions that characterizes environmental crime as ‘activities which cause harm to the environment’ are criticized stating that this ignores the fact that many such activities are considered perfectly lawful (e.g. driving a car).³⁵ Criminal law is normally reserved for the punishment of socially unacceptable behaviour and harm to the environment is, in many situations, considered to be acceptable because it is an inherent effect of many industrial activities which provide significant benefits.³⁶ Therefore, the system of laws which defines the outline for determining whether such benefits outweigh the costs plays the essential role. However, there exists a threat that in existing anthropocentric paradigm, the legislation is developed in accordance with a principles prevailing humans benefit over environmental protection.

The discussions over which offences should fall under environmental crime category are also in present. However, despite slight differences the following acts are usually considered as environmental crimes:

1. acts causing or threatening to cause harm to biotic natural resources:
 - a. fauna crimes (avian, marine, aquatic and terrestrial wildlife);
 - b. flora crimes (terrestrial, aquatic and marine wild plants);
2. acts causing or threatening to cause harm to abiotic natural resources (this includes marine, aquatic, terrestrial or atmospheric pollution).³⁷

However, according to Herbig and Joubert, ‘a crime committed in respect of abiotic natural resources can thus also impact on the biotic environment (and vice versa)’³⁸.

The more specific list of environmental crimes is presented in European Council Convention on the Protection of the Environment through Criminal Law³⁹ as well as in the Directive on the Protection of the Environment through Criminal Law⁴⁰. These offences include the illegal shipment of waste, trade in endangered species or in ozone-depleting substances, and the significant deterioration of wildlife habitats. Furthermore, significant damage to the environment caused by unlawful emissions to the air, water or soil, the unlawful operation of dangerous activities (including manufacture or handling of nuclear materials) or the unlawful treatment of waste are also considered to be criminal offences.

³⁴ Bell, S. and McGillivray, D. (2008). *Environmental law*. Retrieved March 11, 2010 from http://www.oup.com/uk/orc/bin/9780199260560/bell_ch09.pdf. p.278.

³⁵ Ibid., p.281.

³⁶ Ibid., p.281.

³⁷ Herbig, F.J.W and Joubert, S.J. (2006). *Criminological Semantics: Conservation Criminology – Vision or Vagary?* In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. (p.p 50-63). UK, Willan Publishing. p. 61.

³⁸ Ibid., p.61.

³⁹ Convention of the Protection of the Environment through Criminal Law. 4 November 1998, ETS No. 172.

⁴⁰ The European Parliament and the European Council Directive 2008/99/EC of 19 November 2008 on the Protection of the Environment through Criminal Law.

Most often environmental crimes to larger or lesser extent are considered to fall under the following crime categories: (see Annex 6)

- White-collar crimes;
- Corporate crimes;
- Organized crimes;
- Invisible crimes;
- Economic crimes;

IV. Theoretical background

4.1. Criminal law

Although there is disagreement about how laws have evolved, it is clear that at some point law emerged as a formal method by which conflicts are solved and behavior is controlled.⁴¹ Informal methods of social control with a growing complexity of a society become less and less effective. Therefore, different areas of law are designed to control humans' behavior and protect the interests of society and individuals. All of them prohibit or require specific actions and permit the government to exercise powers to assess penalties; however, criminal law has some distinctive features.

The essential difference is that criminal law carries most serious penalties for the acts that causes or threatens to cause the highest harm to society. One more distinctive feature is that criminal penalties are followed by society's moral condemnation, which is stronger than in case of breach of other than criminal laws⁴².

The general purposes of Criminal law are to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.⁴³ Both goals are achieved by the state executing legislation and implementation functions. Many authors emphasize the importance of effective execution of both functions. That is because only forbidding the act by criminal law and supporting it by prevention activities (such as street protection, raids) might be sufficient for some people not to commit such an act, however, for others only effective application of sentences can play a dissuasive role.⁴⁴ Therefore, unfortunately, in many cases the prevention goal can be fulfilled only by imposition of sentences. The imposition of criminal punishment is a serious act and should be based on reasons to assist society in meeting worthy goals, such as the maintenance of social solidarity and the protection of citizens.⁴⁵ It is important to understand that the imposition of the punishment is not the end by itself; it is just a mean to achieve the end – crime prevention and thus the higher compliance to laws. Consequently, higher compliance results in better protection of the particular object protected by criminal law such as human life, property or in our case – environment. Criminal

⁴¹ Reid, J.D. (2009). *Criminal Law, The Essentials*. New York, Oxford University Press. p. 3.

⁴² Ibid., p. 3.

⁴³ Smith, J.C. and Hogan, B. (2003). *Criminal Law*. p. 3.

⁴⁴ Ibid., p. 3.

⁴⁵ Reid, J.D. (2009). *Criminal Law, The Essentials*. p. 3.

law in the first instance controls society's behavior by the means of deterrence, but in a longer term by affecting the public's moral sensibilities.⁴⁶

4.2. Why criminal enforcement?

Criminal enforcement is of course not the only answer in tackling the environmental offences and increasing the compliance to environmental regulations. There are several enforcement regimes aiming to prevent environmental damage from occurring. However, the criminal law holds the most severe sanctions in its disposition. One of the basic conditions for the rules to be obeyed is that their breach can potentially trigger sufficiently dissuasive sanctions.⁴⁷

The European Commission argues that in certain cases only criminal penalties can put the end to the infringement of environmental legislation and have a sufficiently dissuasive effect.⁴⁸ The European Commission's arguments are as follows:

1. *First of all, the imposition of criminal sanctions demonstrates a social disapproval of qualitatively different nature compared to administrative sanctions or a compensation mechanism under civil law.*
2. *Secondly, administrative or other financial sanctions may not be dissuasive in cases where the offenders are impecunious or, on the contrary, financially very strong. Prison penalties might be required in such cases.*
3. *Furthermore, the means of criminal investigation and prosecution (and of mutual legal assistance between Member States) are more powerful than tools of administrative or civil law and can enhance the effectiveness of those procedures.*
4. *Finally, there is an additional guarantee of impartiality because investigating authorities, i.e. other authorities, than those administrative authorities that have granted exploitation licenses or authorizations to pollute will be involved in a criminal investigation.*⁴⁹

4.3. Theory of Rational Choice and Deterrence

'Throughout history the basic punishment goals of criminal law have been retribution, incapacitation, deterrence and rehabilitation.'⁵⁰ According to the Classical School of Criminology, deterrence is the primary purpose of punishment.⁵¹ It is based on the assumption that behavior is rational and that criminal behavior is prevented if people fear the punishment.

⁴⁶ Wennberg, S. (1996); Jareborg, N. (1994) as quoted in Du Rees, H. (2001). *Can Criminal Law Protect the Environment?* Journal of Scandinavian Studies in Criminology and Crime Prevention. Vol.2. p. 109-126. p.111.

⁴⁷ Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action.*

⁴⁸ The European Commission. (2007). *Explanatory memorandum for the proposal for a directive on the protection of the environment through criminal law.* 2007/0022 (COD).

⁴⁹ Ibid.

⁵⁰ Reid, J.D. (2009). *Criminal Law, The Essentials.* p.4.

⁵¹ Walsh, A. and Ellis, L. (2007). *Criminology: an Interdisciplinary Approach.* London, Sage Publications.

The conventional definition of deterrence presented by Gibbs states that deterrence is the omission or curtailment of a crime from fear of legal punishment.⁵² Punishment of a specific offender, or specific deterrence, may involve physical restraint in order to discourage the criminal from future criminal acts by instilling of the consequences; however, deterrence also assumes that one's person's punishment may deter others (general deterrence) from committing the same or similar criminal acts.⁵³ Therefore, the criminal law enforcement institutions protect the particular subject by: firstly ensuring the certain level of protection of that subject (controlling behavior executing the functions allowed by laws) and moreover, ensuring that in case of violation the criminal is punished.

However, in order to succeed in deterring the criminal behavior it is of a great importance to analyze the reasons that makes individuals engage in criminal acts. Many researchers focus on the element of personal choice which is commonly based in a conception of rationality or rational choice.⁵⁴ The 1970s saw the beginnings of the swing away from the ideas of the positivist criminology school, which implied that factors beyond the control of the offender were responsible for crime, and toward the return to the classical notion that the offenders are free actors responsible for their own actions.⁵⁵ This was the beginning of the neoclassicism in criminology.

The Neoclassical Theory of Rational Choice and Deterrence which was built on the Classical Theory of Criminology shares the following central points: (1) The human being is a rational actor, (2) rationality involves an end/means calculation, (3) people (freely) choose all behavior, both conforming and deviant, based on their rational calculations, (4) the central element of calculation involves a cost benefit analysis: Gain versus Pain, (5) choice, with all other conditions equal, will be directed towards the maximization of individual pleasure, (6) choice can be controlled through the perception and understanding of the potential pain or punishment that will follow an act judged to be in violation of the social good, the social contract, (7) the state is responsible for maintaining order and preserving the common good through a system of laws, (8) the swiftness, severity, and certainty of punishment are the key elements in ensuring the deterrent effect.⁵⁶ In order for punishment to yield sufficiently deterrent effect, there must be a relatively high degree of certainty that punishment will follow the criminal act, will be administered soon after the acts, and will be quite harsh.⁵⁷

In other words, the Theory of Rational Choice and Deterrence states that 'crime is a choice that is influenced by its costs and benefits – that is by its 'rationality''⁵⁸. Therefore, 'crime will be more likely to be deterred if its costs are raised'⁵⁹.

⁵² Stafford, M. Deibert, G. (2007). *Deterrence Theory*. Blackwell Encyclopedia of Sociology. Retrieved February 12, 2010 from http://www.sociologyencyclopedia.com/public/toctnode?id=g9781405124331_chunk_g978140512433110_ss1-34

⁵³ Reid, J.D. (2009). *Criminal Law, The Essentials*. p. 4.

⁵⁴ Keel, R.O. (2005). *Rational Choice and Deterrence Theory*. Retrieved January 21, 2010 from <http://www.umsl.edu/~keelr/200/ratchoc.html>

⁵⁵ Walsh, A. and Ellis, L. (2007). *Criminology: an Interdisciplinary Approach*. p. 65.

⁵⁶ Keel, R.O. (2005). *Rational Choice and Deterrence Theory*.

⁵⁷ Walsh, A. and Ellis, L. (2007). *Criminology: an Interdisciplinary Approach*. p. 68.

⁵⁸ Cullen, T.F. and Agnew, R. (2006). *Criminological Theory: Past to Present (Essential Readings)*. Third Edition. Los Angeles, CA: Roxbury. Retrieved April 15, 2010 from <http://www.roxbury.net/images/pdfs/ctr3intro.pdf> p.7.

⁵⁹ *Ibid.*, p.7.

4.4. The importance of effective enforcement

The state is responsible for maintaining order and preserving the common good through the system of laws.⁶⁰ Therefore, the state is obliged to exercise the duty of preventing from crimes through sanctions and/or threats and/or promises. The theory of Rational Choice and Deterrence presumes that crime is a rational action; thus it occurs when an offender decides to risk violating the law after considering two following factors: (1) his or her own personal situation and (2) external situational factors.⁶¹ External situational factors basically mean how well the 'target' is protected by the state. However, only tightening of legislation without effectiveness of enforcement has little effect on compliance to the laws. This is because the potential lawbreaker have to perceive that the 'costs' for committing a crimes are high not only 'on paper', but in practice too. Therefore, a number of authors emphasize the importance of effective enforcement performance in creating the deterrence from criminal behavior. The effective operation of the institutions responsible for detection, apprehension, prosecution and conviction of lawbreakers increase the possibility of more certain, swift and severe punishment and therefore yields stronger deterrent effect against crimes.⁶² The criminal's presumption of how certain, swift and severe the punishment is directs his/her actions backwards or towards the crime.

According to Akella and Cannon, criminal enforcement is a 'chain' that includes a number of steps (such as detection, pre-trial investigation, prosecution, conviction and sentence execution); therefore for enforcement system to effectively deter the crime, each of these steps must happen efficiently.⁶³ The barriers experienced in one step can seriously affect the whole system. Therefore, strengthening the enforcement is challenging task, requiring the careful examination of weaknesses of each component in the 'enforcement chain'. Unfortunately, although weak enforcement in the environmental realm is generally acknowledged as a widespread and significant problem, the full complexity of underlying causes of this is often not understood.⁶⁴

In conclusion, the Theory of Rational Choice and Deterrence has been chosen for the study due the fact that 'environmental crimes are assumed to be determined by rational calculation and are generally the result of a premeditated decision'.⁶⁵ (Not by personal factors, such as temperament, intelligence, and cognitive style, as well as background factors, such as family or neighborhood affect your choices). Moreover, environmental crimes usually bring material rewards instead of psychological ones; and according to the Walsh and Ellis, punishment has a greater deterrent effect for the crimes that bring material reward instead of crimes bringing psychological satisfaction.⁶⁶

⁶⁰ Keel, R.O. (2005). *Rational Choice and Deterrence Theory*.

⁶¹ Siegel, L. (1992) as quoted in Keel, R.O. (2005). *Rational Choice and Deterrence Theory*.

⁶² Sundari Akella, A. and Cannon, J.B. (2004). *Strengthening the Weakest Links: Strategies for Improving the Enforcement of Environmental Laws Globally*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. (528-567p.p).UK, Willan Publishing. p. 528.

⁶³ Ibid., p.529.

⁶⁴ Ibid., p.528.

⁶⁵ Du Rees, H. (2001). *Can Criminal Law Protect the Environment?*

⁶⁶ Walsh, A. and Ellis, L. (2007). *Criminology: an Interdisciplinary Approach*. p. 70.

V. Enforcement regimes for the protection of the environment in Lithuania

5.1. Legal basis

The Lithuanian legal system is based on the legal traditions of continental Europe. During the Soviet occupation (1940-1990) legal system of Lithuania was critically altered and changed into a system based on state ownership of natural resources and purely administrative economic management. The Lithuanian legislation was subordinated to the central legislation of the USSR.

The Criminal Code of Lithuanian SSR included several articles on offences against natural resources but not on offences against environmental protection; however, in 1974 the Criminal Code was amended by adding the criminal liability for pollution of water, air and soil.⁶⁷ On March 11, 1990 Lithuania re-established its independence, and it was obvious that the legal system should be adjusted to the principle of the rule of law and international standards. The legal reform has been started which also covered the changes in legal protection of environment in order to meet international and European environmental protection standards.

The adoption of The Constitution of the Republic of Lithuania⁶⁸ in 1992 created the legal basis for development, implementation and enforcement of environmental legislation. Lithuanian Environmental Protection Law⁶⁹ which is based on constitutional provision laid the foundations for legal acts in environmental sectors. The article 34 of this law provides that violations of environmental protection legislation shall be sanctioned in accordance of the laws of the Republic of Lithuania. Therefore, Lithuania has the following enforcement regimes for the protection of the environment: criminal, administrative and civil. (see Annex 4.)

5.2. Relationship among the administrative, criminal and civil liability

To begin with, the difference between administrative and criminal offence lies mainly in the degree of adverse effect of the unlawful act rather than on the nature of the act.⁷⁰ ‘Criminal law appears to be in many cases the *ultima ratio*⁷¹, only applicable for very serious cases or where administrative law has been not sufficient to ensure compliance and to put an end to the infringement of the environmental legislation.’⁷²

One element that is often mentioned to differentiate criminal from administrative measures is that criminal sanctions produce the ‘social blame’; that is, it has negative impact on the reputation of the offender (the criminal sanctions are registered in the personal record of the

⁶⁷ Milieu Ltd. (2003). *Study on criminal penalties in a few candidate countries' environmental law. Final report.* For the European Commission (DG Environment) Contract No. B4-3040/2002/342084/MAR/A3. Retrieved December 12, 2009 from http://ec.europa.eu/environment/legal/crime/pdf/criminal_pen_vol1.pdf.p.43.

⁶⁸ Constitution of the Republic of Lithuania (Lietuvos Respublikos konstitucija), Vilnius, 1992.

⁶⁹ Environmental Protection Law Of the Republic of Lithuania (Lietuvos Respublikos aplinkos apsaugos įstatymas) // Official Gazette, 1992, No 5-75.

⁷⁰ Milieu Ltd. (2003). *Study on criminal penalties in a few candidate countries' environmental law. Final report.* p.44.

⁷¹From Latin ‘Last resort’.

⁷² Milieu Ltd and Huglo Lepage Associates. (2004). *Study on measures other than criminal ones in cases where environmental Community law has not been respected in the EU Member States. Summary Report.* B4-3040A/2003/369724/MAR/A.3. Retrieved December 10, 2009 from http://ec.europa.eu/environment/legal/crime/pdf/ms_summary_report.pdf p.11.

person).⁷³ Meanwhile there is little or no social blame associated to administrative sanctions; rather the only intention to re-establish the public order.⁷⁴

Moreover, the clear distinction between the bodies responsible to impose the sanctions can be made. In Lithuania the administration or administrative body is responsible for imposing administrative measures whereas a criminal court is in charge of imposing criminal measures.

Furthermore, the differences can be seen in the severity of sanctions provided by each regime. Criminal sanctions are the most severe measure that can be applied to the offender. However, many authors emphasize that in terms of types the administrative and criminal sanctions are quite similar with the exception of imprisonment that is rarely judged for environmental offences.⁷⁵

Civil liability is aimed at the compensation of the private party for the damages or injuries caused to persons or property, and thus to protect private interests, whereas administrative and criminal law seeks to protect public interests.⁷⁶ However, the distinction between public and private law becomes blurred if a public authority finds it necessary to claim compensation of damages caused to the common environment or for any costs assumed by the administration e.g., cleaning the contaminated site.⁷⁷ Compensatory measures adopted under civil law do not prohibit the application of administrative or criminal sanctions; whereas the accumulation of administrative and criminal sanctions is prohibited⁷⁸.

Even though the previously described regimes share different methods, at the end their goal is to ensure the compliance to environmental protection rules, thus leading to greater environmental protection. The deterrent effect associated with criminal, administrative or civil penalties help to achieve the ultimate objective of environmental regulation – prevent environmental damage from occurring.

5.3. Environmental crime in Lithuania

The Criminal Code of the Republic of Lithuania⁷⁹ is the primary legal source to define environmental crime and to set out penalties. According to the Code, the environmental offence is considered a criminal act only when the act poses a threat to the life or health of a large number of people or causes/could have caused major damage to the fauna, flora or other serious consequences to the environment. These are the criteria distinguishing criminal liability from administrative. The environmental criminal acts are classified into crimes and misdemeanors; this classification is mainly based on the extent to which the public is endangered. The following conducts constitutes a criminal offence when committed intentionally or with serious negligence. The list of criminal offences is presented in the articles 256, 257, 267, 270-274 and 310 of the Criminal Code. (see Annex 5.)

⁷³ Milieu Ltd and Huglo Lepage Associates. (2004). *Study on measures other than criminal ones in cases where environmental Community law has not been respected in the EU Member States*. Summary Report. p.14.

⁷⁴ Ibid., p. 13.

⁷⁵ Ibid., p.63.

⁷⁶ Ibid., p.9.

⁷⁷ Ibid., p.9.

⁷⁸ The principle *Non bis in idem* (which says that the individual cannot be punished twice for the same act).

⁷⁹ Criminal Code of the Republic of Lithuania (Lietuvos Respublikos baudžiamasis kodeksas) // Official Gazette, 2000, No 89-2741.

In 2006-2007 (January-March) the majority of criminal investigations were brought up for the unauthorised forest logging.⁸⁰ Meanwhile in 2008-2009 the most often investigated environmental crime became violations of regulations governing the environmental protection and the use of natural resources (Article 270 Criminal Code).⁸¹ (see Table 10. Annex 3.)

VI. Results and discussion

6.1. The barriers to the effective criminal enforcement of environmental laws

Enforcement is the process of making sure that something is done or obeyed⁸². As it was presented in the previous chapter there are several enforcement regimes for protection of the environment. However, this study refers to the criminal enforcement of environmental law which includes such activities as preventing criminal act from occurring (such as surveillance and policing) as well as ensuring that in case of crime, the offenders receive appropriate punishment (which also is one of the means to prevent from offending). In order to achieve the appropriate criminal punishment, the case has to reach the criminal justice system and go through the following stages: the pre-trial investigation, the trial, and the sentence execution stages⁸³ (see Annex 4.). However, due the time and scope constraints, the study's intent is to examine the barriers experienced during the first two stages of criminal procedure.

As a theoretical framework the study refers to The Theory of Rational Choice and Deterrence which advocates that individual restraints from criminal behavior due the fear of punishment. However, for the punishment to be able to play sufficiently deterrent effect, the institutions involved in criminal enforcement have to ensure 3 main factors: certain, severe and swift criminal punishment. That, according to the Theory increases the perceived certainty, severity and celerity of punishment, and therefore, leads to the less intent to commit a crime. In order to fully achieve the deterrent effect, it is crucial to ensure that there exist no barriers compromising the enforcement system's ability to realize the previously mentioned factors. Therefore, in the following sections the researcher analyses whether collected data reveal the existence of obstacles in ensuring those three elements during first two stages of environmental criminal procedure in Lithuania.

6.1.1. The initiation of the criminal process

In general the pre-trial investigation can be initiated by the complaint from the individual or a group as well as on the initiative of prosecutor.⁸⁴ In case of environmental criminal acts the institutions responsible for administrative enforcement of environmental law (environmental

⁸⁰ Prosecution Service of the Republic of Lithuania. *The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania* [Lietuvos Respublikos Generalinės Prokuratūros, kuriomis padaroma žala aplinkai, tyrimo ir prokurorinės kontrolės būklės Lietuvoje apibendrinimas]. June 1, 2007, No. 7.7-16.

⁸¹ Prosecution Service of the Republic of Lithuania. *The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania* [Lietuvos Respublikos Generalinės Prokuratūros, kuriomis padaroma žala aplinkai, tyrimo ir prokurorinės kontrolės būklės Lietuvoje apibendrinimas]. February 10, 2010, No. 17.3-36.

⁸² Collin, P.H. (2004). *Dictionary of Law*. London, UK, Bloomsbury Publishing Plc.

⁸³ There are also optional stages described in Annex 4.

⁸⁴ Article no. 166, Code of the Criminal Procedure of the Republic of Lithuania (Lietuvos Respublikos baudžiamojo proceso kodeksas) // Official Gazette, 2002, No 37-1341.

protection institutions⁸⁵) are the most common initiators of the environmental criminal process and play the key role in the flow of environmental cases through the criminal justice system. This is because previously described institutions are obliged by law to report the infringements of the provisions of the environmental laws to the police or public prosecution authorities where there are grounds for suspicion that a criminal act has been committed.⁸⁶

However, the majority of the respondents have expressed the belief that the numbers of initiated environmental criminal cases would be higher in case of more active reporting from the environmental protection institutions and general society. They have argued that the number of registered environmental crimes a year does not represent the real situation in the country and many serious environmental crimes are being treated as administrative offences. (see Table 1. Annex 3.) The failures to report the crimes, unfortunately, undermine the enforcement system's capacity to ensure the certainty that offenders receive appropriately severe punishments. Therefore, the following sub-section will focus on the possible causes of this barrier.

6.1.1.1. The causes of failing to report environmental crime

To begin with, the research revealed that the most common problem the Lithuanian environmental protection institutions face is unclear and deficient legislation. More particularly, the respondents from the environmental protection institutions emphasized the scarcity of a clear legal guidance for the distinction of the two Codes: the Code of Administrative Offences⁸⁷ and the Criminal Code. The Criminal Code is the primary legal source to define environmental crime and to set out penalties, meanwhile the Code of Administrative Offences defines administrative offences. Criminal penalty is considered as a last resort, only applicable for very serious cases or where administrative law has been not sufficient to ensure the compliance and to put the end to the violation of the legislation.⁸⁸ Therefore, the seriousness of the conduct decides the application of the Administrative or the Criminal Code. However, the environmental protection institutions noted that they have an unclear task to decide whether the harm to the nature is big enough to be reported to the prosecutors. As one of the interviewees from Environmental Protection Inspectorate expressed himself:

'What is 'major damage' to the nature'? The explanation what constitutes 'major harm' is very vague, therefore causing an unlimited spectrum of interpretations. The provisions of the Code of Administrative Offences are more concrete and easier to apply.'

Therefore, most of the respondents from environmental protection institutions have agreed that since the Code of Administrative Offences provides more detailed and clear regulations on the application of penalties for violations of environmental laws, there is no surprise that this Code remains the main instrument for enforcement of environmental laws. (see

⁸⁵ The State Environmental Protection Inspectorate under the Ministry of Environment – on the national level and 8 Regional Environmental Protection Departments and their subordinated 56 Local Environmental Protection Agencies – on regional and local levels.

⁸⁶ Article no.3, Law on the State Control of Environmental Protection of the Republic of Lithuania (Lietuvos Respublikos aplinkos apsaugos valstybinės kontrolės įstatymas) // *Official Gazette*, 2002, No 72-3017.

⁸⁷ Code of Administrative Offences of the Republic of Lithuania (Lietuvos Respublikos administracinių teisės pažeidimų kodeksas) // *Official Gazette*, 1985, No 1-1; 2002, No 112-4972.

⁸⁸ Milieu Ltd and Huglo Lepage Associates. (2004). *Study on measures other than criminal ones in cases where environmental Community law has not been respected in the EU Member States*. Summary Report. p.11.

Table 8. Annex 3.) Additionally, the interviewees have stressed that the administrative process is ‘cheaper’ than criminal.

The interviewees from environmental protection institutions admit the fact that the ‘habit’ of using administrative sanctions for environmental violations is still strong. As one of the respondents from Environmental Protection Agency has stated:

‘We are used on applying the administrative liability... Since it is hard to decide which enforcement tool to choose, it is most common to apply administrative penalties. At present there is little legal practice concerning the application of penalties pursuant to the Criminal Code.’

And as interviewee Balandis added:

‘There is scarce sentencing practice on application of the new Criminal Code yet. It can be said that currently criminal environmental law is “law in books” whereas the Code of Administrative Offences is a “law in action”.’⁸⁹

Additionally, another commonly mentioned issue by the respondents from the institutions responsible for the public administration is the scarcity of financial and human resources. As one of the interviewees from Trakai Local Environmental Protection Agency highlighted:

‘The inadequate human and financial resources cause the situation that in environmental protection field in Lithuania work only ‘idiots’ or ‘patriots’.’⁹⁰

However, several respondents from the environmental protection institutions assured that despite all the previously mentioned difficulties they are still trying to initiate the criminal process and the low rates of criminal procedure might be explained by the fact that only considerably small administrative offences occur the most often; whereas the offences causing the major harm to nature is relatively rare phenomenon. What is more, they have also argued that environmental crime is not as visible as might seem.

Moreover, another interesting issue that came up on several occasions during the interviews as well as is often named by other researchers is the double role of environmental protection institutions. That is, the environmental protection institutions act as advisors and supervisors to the corporations; that therefore makes the decision (whether to report crimes or not) a bit biased.⁹¹ One respondent pointed out that the environmental protection officials tend to foster the collaborative relationship with the ‘supervised’ due the fact that the breaches of licenses they see as their own mistakes caused by the lack of supervision.⁹² The recent study by Du Rees has revealed interesting factors why the Swedish environmental supervisory officials are not always reporting the suspected environmental offences. According to the research, there are four most common ‘neutralizations’ employed by supervisory agencies: (1) ‘denial of the victim and/or injury’ (it was often claimed that environmental crimes have no direct and clear victim because it is difficult to connect the specific action (e.g. discharge of dangerous substances) to a specific form of damage to the environment or to people’s health); (2) ‘shifting the blame’ (the officials tend to shift the blame by arguing that environmental crimes are difficult to prove and that

⁸⁹ Balandis, D. As quoted in Milieu Ltd. (2003). *Study on criminal penalties in a few candidate countries’ environmental law. Final report.* p.52.

⁹⁰ Gramauskas, V. (2010, February 5). Online personal interview.

⁹¹ Du Rees, H. (2001). *Can Criminal Law Protect the Environment?*

⁹² Balandis, D. (2010, January 19). Personal interview.

reporting the offence is pointless because it leads nowhere); (3) ‘denial of the company’s responsibility’ (the officials tend to deny the company’s responsibility due the fact that the act was committed unintentionally; (4) ‘higher loyalties’ (the officials restrain themselves from reporting because of the ‘political considerations’, e.g. the fear to lose the attractiveness for the potential companies as well as potential effects on job opportunities).⁹³ The most common technique of neutralization employed by Swedish officials at the environmental supervisory agencies is ‘shifting the blame’.⁹⁴ Several officials from Lithuanian environmental supervisory agencies also agreed that one of the most important reasons why they do not report the environmental crimes on every occasion is the low possibility that the case will lead to a prosecution. Therefore, same as in Sweden, they ‘avoid putting work into something that is not going to lead to an indictment’.⁹⁵ Moreover, the research in Lithuania also suggests that the officials are likely to employ the ‘denial of the victim or/and injury’ neutralization technique. Therefore, maybe that could explain why during the year 2008-2009 in Lithuania, the corporate criminal liability has been upheld only twice.⁹⁶

Several interviewees believed that there exists a lack of control over the institutions responsible for the administrative enforcement of environmental law in terms of the initiation of the criminal process. The ambiguity in the legislation provides the environmental protection agencies with a lot of discretion in deciding whether an action is a crime or administrative offence. As it was discussed before, this also threatens with a possibility of using the laws for the self benefit. That is, also for the benefit of the controlled companies. Even though the Code of Administrative Offences does oblige environmental inspections to report the suspected crime, the mechanism for enforcement is still not in place.

Couple interviewees (not directly involved in the legislation or implementation of environmental criminal law) also mentioned the problem of corruption. They believe that the current conditions when supervisory agencies have high discretion over deciding on the initiation of the criminal process, unfortunately help to create the ‘bribe friendly’ environment. The lack of transparency in the public administration institutions creates a disrespect for the law and therefore for the institutions responsible for law implementation.⁹⁷ As one of the interviewed law scholars proposed:

‘Companies get used to the fact that it is quite easy to evade the laws by bribing the officers and thus getting away with the illegal activities much easier. Public administration institutions meanwhile also feel getting more benefits from these activities and compensating the low incomes provided by the government. This ‘win-win situation’ unfortunately undermines all parts of the country’s law enforcement system.’

It is of course impossible to measure the exact rates of corruption within the environmental protection field, however, Lithuania’s Corruption Perception Index⁹⁸ allows to think that corruption still might be the issue in the country.

⁹³ Du Rees, H. (2001). *Can Criminal Law Protect the Environment?*

⁹⁴ Ibid.

⁹⁵ Lundberg, M. As cited in Du Rees, H. (2001). *Can Criminal Law Protect the Environment?*

⁹⁶ Statistics from National Court Administration of the Republic of Lithuania. Retrieved January 12, 2010 from www.teismai.lt

⁹⁷ Sundari Akella, A. and Cannon, J.B. (2004). *Strengthening the Weakest Links: Strategies for Improving the Enforcement of Environmental Laws Globally*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*.p. 528.

⁹⁸ Every year the Transparency International publishes an annual Corruption Perceptions Index (CPI) ordering the countries of the world according to "the degree to which corruption is perceived to exist among public officials and politicians". Retrieved 12 April, 2010 from http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table

However, the same law scholar emphasizes the importance of addressing the issue of transparency not only in environmental protection institutions, but in other enforcement chain institutions as well. A clean and effective work of prosecutors and judiciary is also the key element for encouraging the transparent and well functioning enforcement chain.⁹⁹

In conclusion, the respondents emphasized that the low levels of environmental crime reporting, unfortunately causes the disproportion between the environmental harm caused and the sanction applied. As one of the prosecutor explained:

'In 2007 our Office was trying to initiate the case on the illegal use of wild fauna resources, since the harm to the nature was estimated to be around 850 thousand litas¹⁰⁰. However, after first initial steps were taken, the officers has found out that the offender has already been imposed the administrative fine which was 100 litas¹⁰¹. Taking into consideration the principle of Double Jeopardy¹⁰² there was no way we could start the criminal procedure for the act that was obviously criminal.'

According to the official conclusions made by the Prosecution Service of Lithuania¹⁰³, the similar situations unfortunately happens to appear quite often. The prosecutors argue that tendency not to report the suspected environmental crime resulting either in administrative fine or in no sanction at all, lead to the institutional failure to ensure the actual certainty and severity of the punishment. That influences the potential criminal's perception of how well the 'target' is protected and therefore determines his/her decision to involve into criminal activity.

6.1.1.2. Societal perceptions towards environmental crime

The majority of the respondents have expressed the opinion that that the level of the society's interest in tackling the environmental crime is still quite low. According to them, society is not ready to consider that this type of crime concerns primary interests which must be protected by criminal law. 'It takes time and requires much work and negotiation before acts that have begun to be defined as criminal become self-evident criminal in the context of the wider society.'¹⁰⁴ As one of the respondents from Environmental Protection Inspectorate argued:

'In general the society agrees that harming nature is an illegal activity. However, sometimes they do not consider it as a crime and that most severe sanction such as imprisonment should be applied.'

As one of the law scholars also added:

'The society does not perceive crimes to environment as dangerous and threatening as for example homicide or theft. Therefore, people unconsciously agree with the lower

⁹⁹ Sundari Akella, A. and Cannon, J.B. (2004). *Strengthening the Weakest Links: Strategies for Improving the Enforcement of Environmental Laws Globally*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p. 528.

¹⁰⁰ Around 245565 EUR

¹⁰¹ Around 29 EUR

¹⁰² Principle that a person cannot be punished twice for the same offence.

¹⁰³ Prosecution Service of the Republic of Lithuania . The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. February 10, 2010.

¹⁰⁴ Mårald, E. (2001). *The BT Kemi Scandal and the Establishment of the Environmental Crime Concept*. p.149.

levels of criminal law protection of the environment. That as a consequence might also demotivate the public institutions to start a long and costly criminal procedure.

Fortunately, several officials have underlined that the environmental awareness and consciousness of society is likely to be growing. However, for the time being it seems that Lithuania is still facing the widely accepted issue that ‘environmental crime is not treated seriously by the politicians, law enforcement institutions as well as wider society’¹⁰⁵.

There are a lot of discussions going on trying to reveal the reasons behind the low status of environmental crimes. Some authors blame legislators stating that they are very slow in putting the issue of environmental offence on the political agenda.¹⁰⁶ Other scholars accuse the enforcement institutions for a very light-handed and grossly inadequate enforcement performance.¹⁰⁷ According to White, ‘the occasional prosecution and imprisonment of the environmental offender is the exception that only reinforces the general rule – environmental crime is not treated seriously by the formal institutions of criminal justice’¹⁰⁸. Moreover, a number of authors also emphasize the importance of societal ignorance towards environmental problems. They argue that stronger societal concern for environment would most likely motivate the individuals to report illegal environmental activities more often, and also would oblige the environmental protection institutions to work more effectively towards protecting environment. However, the research is not aiming to answer question ‘who is the most responsible for the low status of environmental crimes’; yet, the researcher supports the idea stating that all of the previously mentioned actors do play an important role and highly influence each other.

As two of the interviewed journalists have stressed, there is a need to draw society’s attention to the significance of harm caused by environmental criminal acts. The use of criminal law measures is of a great importance because ‘the imposition of criminal sanctions demonstrates a social disapproval of qualitatively different nature compared to administrative sanctions or a compensation mechanism under civil law’¹⁰⁹.

‘It is natural that society tends to condemn people who committed a criminal acts more than the ones who are subject to administrative liability. The more frequent application of criminal sanctions is likely to ‘raise the status of environmental crimes’ and society would consider them as more dangerous activity. The growing public awareness would also make the institutions responsible for environmental protection feel more responsible for bringing the criminal process and thus ensuring the well-being of the society.’¹¹⁰

So, the results of the research suggest that institutions responsible for environmental criminal law enforcement in Lithuania still need the stronger societal support in protecting the environment. On the other hand, as one of the respondents noted, the perceived unfairness and ineffectiveness of enforcement performance discourage people from taking actions; therefore, it is crucial to establish the society’s confidence in the enforcement institutions.

¹⁰⁵ White, R. (2009). Environmental Law Enforcement. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. (p.p 483-484). UK, Willan Publishing. P.483.

¹⁰⁶ Mårald, E. (2001). *The BT Kemi Scandal and the Establishment of the Environmental Crime Concept*. p.149.

¹⁰⁷ White, R. (2009). Environmental Law Enforcement. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p. 483.

¹⁰⁸ White, R. (2009). Environmental Law Enforcement. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*.p. 483.

¹⁰⁹ The European Commission. (2007). *Explanatory memorandum for the proposal for a directive on the protection of the environment through criminal law*.

¹¹⁰ Sandra Kučinskienė and Daumantas Butkus. (2010, January 22). Online personal interview.

6.1.2. The pre-trial investigation process

The initiation of the criminal process is followed by the decision of the prosecutor either to start the pre-trial investigation or not. As the report made by the Prosecution Service of the Republic of Lithuania concludes, in 2008-2009 the numbers of environmental criminal pre-trial investigations has definitely increased comparing to previous years, however, to state that the enforcement chain already ‘works’ in its full capacity is still too early.¹¹¹

The statistical data on dismissed pre-trial investigations indicates relatively higher numbers of discontinued environmental criminal pre-trial investigations in comparison to other crimes. From a total number of completed pre-trial investigations in the year 2008-2009, around 40% were discontinued in cases of crimes against environment; meanwhile in case of crimes against economy and business order as well as narcotics related crimes the numbers of dismissed investigations haven’t exceeded 21%.¹¹² (see Table 2. Annex 3.) This might suggest that there exist obstacles impeding environmental crimes investigation process and preventing from successful prosecution.

Relatively higher rates of pre-trial investigation discontinuation together with deficiency in the criminal process initiation determine the comparatively low frequency of environmental criminal cases coming to the courts. It is estimated that roughly around 30 environmental criminal cases reach the Lithuanian courts every year.¹¹³ (see Table 3. Annex 3.) This number is comparatively small. Comparing to other crimes, for example, in case of crimes to ownership, property rights and property interests, around 8000 cases reach the courts every year.¹¹⁴ (see Table 4. Annex 3.) Or in case of drug related crimes around 1000 cases reach the court each year.¹¹⁵ (see Table 5. Annex 3.) This might suggest that, in comparative terms, the amount of attention given to environmental crimes is smaller. That therefore reduces the certainty that appropriate punishment for environmental criminals is applied.

Therefore, the following sub-section will focus on the possible causes of the relatively frequent discontinuation of environmental criminal pre-trial investigation.

6.1.2.1. The causes leading to relatively frequent discontinuation of environmental criminal pre-trial investigations

To begin with, according to the prosecutors the analysis of the possible causes of the relatively frequent discontinuation should be started from naming the existing uncertainties and legal loopholes in the environmental legislation. The research reveals that the prosecutors, same

¹¹¹ Prosecution Service of the Republic of Lithuania. The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. February 10, 2010.

¹¹² Data taken from Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania (retrieved January 12, 2010 from www.vrm.lt) and Prosecution Office of the Republic of Lithuania

¹¹³ Data taken from the National Courts Administration of the Republic of Lithuania. Retrieved February 23, 2010 from www.teismai.lt

¹¹⁴ Data taken from the National Courts Administration of the Republic of Lithuania. Retrieved February 23, 2010 from www.teismai.lt

¹¹⁵ Data taken from the National Courts Administration of the Republic of Lithuania. Retrieved February 23, 2010 from www.teismai.lt

as environmental protection institutions emphasize that the greatest issue while conducting the pre-trial investigation is handling the incomplete and uncertain legislation.¹¹⁶

The first problem in the legislation was explicitly explained by one of the respondents:

'The main task of the prosecutor is to prove that the action constitutes the criminal act – crime or misdemeanor. Therefore, in case of environmental offence the Criminal Code requires to prove the element of 'major damage or other serious consequences to the environment or a threat to the health or life of a large number of people'. However, the laws do not provide the criteria what should be considered that 'major harm' or 'a large number of people'. Thus there exists a wide variety of interpretations, but no unified practice. It is just one example of this kind of vague/ambiguous norm; there exist even more and makes some legal norm stay only 'on paper'.

Of course, there exist methodologies prepared by the Ministry of the Environment in terms putting the monetary value on the caused environmental harm; however, the prosecutors emphasize the lack of clarity in the regulations.¹¹⁷

Additionally, the prosecutors also agree with the environmental protection institutions that there exist a failure in providing explicit legal guidance in terms of which code (Code of Administrative Offences or Criminal Code) should be applied in which circumstances. As one of the respondents explained:

*'There are some explanations, however, very scarce. It is quite urgent to start harmonizing those two codes. The Criminal Code of Lithuania was adopted in 2000; however, the development of the Code of Administrative Offences dates back to the year 1984. Lithuania in 1990 experienced the major shift in legal system and the legislators have chosen the path of 'amending', but not developing a new code of administrative offences. As a consequence, it makes harmonization efforts much more challenging.'*¹¹⁸

As the interviewee from the Prosecution Office added:

'The lack of clarification which Code (the Code of Administrative Offences or the Criminal Code) to apply creates so called 'who is responsible for what' situation which threatens that the offenders escape with a very mild punishments (since the Code of Administrative Offences provides clearer regulations). That, therefore, does not help to build the deterrent effect.'

Apart from being uncertain, the legislation in environmental criminal field also fails to be explicit enough and cover all activities that might cause damage to the nature. The prosecutors as well as the respondents from the institutions involved in legislation have listed the number of inaccuracies in Criminal Code of Lithuania 'turning the green-light' for successful evasion of the laws.

Moreover, the respondents from the prosecution service as well as the police also strongly agreed on the widely accepted argument, that the 'environmental legislation as a result

¹¹⁶ Prosecution Service of the Republic of Lithuania. The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. February 10, 2010.

¹¹⁷ Prosecution Service of the Republic of Lithuania. The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. February 10, 2010.

¹¹⁸ Balandis, D. (2010, January 19). Personal interview.

of its size and complexity is difficult to apply in practice and that the officials involved at the various environmental law enforcement areas lack the necessary expertise and experience¹¹⁹. That is also because in the majority of cases the legal provisions describing the environmental crime is constructed as a 'blank type' - 'the provisions where the description of the situation regarded as a crime is not exhaustively defined in the text of the provision describing the criminal behavior but also includes a more general reference to other legal regulations'¹²⁰. 'The criminal situation described in the provision is therefore partially empty.'¹²¹ Thus the officials responsible for the application of environmental criminal sanctions have to have a sufficient level of knowledge in environmental laws. However, according to the respondents from the prosecution office and the police, the knowledge in applying the environmental laws is still not sufficient. A number of authors argue that environmental criminal law is a very specific field. The confusion in the laws 'what constitutes a big harm' is dangerous, because it gives too many powers for the officers to decide which level of environmental damage is still acceptable. As Du Rees perceptively states:

*'A certain level of environmental damage is accepted in modern society since it serves to provide for other social interests. Unfortunately the formulation of the environmental protection regulations, which involve weighting up of competing environmental and economic interests, provides of course no clear guidance for the institutions whose job is to apply the law.'*¹²²

Unfortunately, some respondents from Lithuania also greatly support this idea stating that the lack of the political will to strengthen the environmental protection is highly influenced by the fact that economic interests still take the priority over the environmental. They also agreed on Brack's assumption that the resources and political will devoted to tackling environmental crime are derisory and show the lack of environmental awareness amongst the great number of politicians.¹²³

Additionally, another interesting issue raised by the Report of the Prosecution Service of Lithuania, is the lack of expertise and experience in analyzing suspected environmental offences.¹²⁴ The prosecutors state that in many cases the inappropriate crime scene primary analysis (without consulting with the experts in the field) cause the destruction or damage to the evidence that would have been crucial for proving that environmental crime has taken place and finding the guilty persons.¹²⁵ The prosecutors stress that pre-trial investigation institutions are confused about what they have to prove in the first place ('major harm' issue); thus the previously explained fact about inaccuracy in crime scene examination complicates the situation even more.¹²⁶ The nature of environmental crime is in general considered to be complex, and

¹¹⁹ Du Rees, H. (2001). *Can Criminal Law Protect the Environment?* p.112.

¹²⁰ Milieu Ltd and Huglo Lepage Associates. (2004). *Study on measures other than criminal ones in cases where environmental Community law has not been respected in the EU Member States. Summary Report.* p.11.

¹²¹ Ibid., p.11.

¹²² Du Rees, H. (2001). *Can Criminal Law Protect the Environment?* p.116.

¹²³ Brack, D. (2002). *Combatting International Environmental Crime.* In White, R. (Ed.).(2009). *Environmental Crime: A Reader.* (p.p 485-492). UK, Willan Publishing, p. 492.

¹²⁴ Prosecution Service of the Republic of Lithuania . The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. February 10, 2010.

¹²⁵ Ibid.

¹²⁶ Ibid.

therefore requiring a ‘package’ of knowledge in certain fields such as chemistry, biology and etc. As one of the respondents noted:

‘Environmental harm may reveal itself after many years and in a totally different location than the offence took place. Special skills are definitely required in order to detect, investigate and assess the damages properly.’

Furthermore, another important obstacle contributing to higher rates of dismissed investigations is difficulty in finding the persons responsible for the environmental criminal acts, especially when a criminal act is committed by corporations. Many respondents argued that there exists a tendency for the CEOs to hide behind the legal person in order to prevent the personal liability. However, the respondent for the Prosecution Service has assured that since the corporate environmental offences usually cause the most serious environmental damage, the enforcement institutions are putting a great effort in revealing the individuals responsible for the act.¹²⁷ Nevertheless, the respondent also added that the detection and investigation of the corporate offences is much more complicated due to the higher level of organization. The failure to apply the individual liability decreases the deterrent effect because usually the individuals seek to answer for the crime with the corporate money (which in case of big profitable companies is not the issue).

Continuing further with the discussion, the prosecutors emphasize that the absence of the statutory public authority that is legally obliged as well as qualified enough to determine the damage to the nature also contributes to the frequency of dismissed environmental criminal pre-trial investigations. As one of the interviewees explained:

‘There exists a problem that sometimes the public environmental protection agencies do not undertake the task to determine the environmental damages or state that they are not qualified (or do not have the special equipment) to execute certain examinations that are crucial for the determination of harm. Therefore, the investigators are forced to apply to private research laboratories. That as a consequence, costs money. And there are issues with the financial resources.’

What is more, the prosecutors also stressed the issue of high workload in the institutions responsible for the environmental criminal enforcement.¹²⁸ The lack of human resources is also followed by the lack of the financial ones create the insufficient enforcement performance.¹²⁹

Apart the failures to execute the high quality crime scene examinations, several respondents stressed that enforcement institutions also fail to ensure the swiftness of the criminal process. The Report conducted by the Prosecution Service of Lithuania has indicated the major reasons of the excessive length of the environmental pre-trial investigations: (1) lengthy delays between the occurrence of the offence and the initiation of the pre-trial investigation (that, however, could be explained by the fact that environmental crime is considered to be less visible crime); (2) the slowness of the environmental damage assessment procedure; (3) lack of qualifications among the public experts, the scarcity of the necessary equipment, and the shortage of the financial as well as human resources; (4) incomplete primary crime scene

¹²⁷ Gyls, M. (2010, March 8). Online personal interview.

¹²⁸ Prosecution Service of the Republic of Lithuania. The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. February 10, 2010.

¹²⁹ Ibid.

examination often increases the possibility for the need to repeat the examination (unfortunately, that might also mean the loss of the evidence).¹³⁰

Even though, according to the official report of the prosecution office, in 2008-2009 the length of pre-trial investigation in this category of cases is considered to be good, however, several respondents argue that the elimination of the previously listed issues would contribute to more swift criminal procedure.

As it was discussed in the theory part, the failure to ensure the swiftness of the criminal legal proceedings reduce the possibility of achieving the throughout deterrent effect.¹³¹ Moreover, prosecutors emphasize that the excessive length of the pre-trial investigation also raise difficulties in ensuring the certainty of sanctioning due to the fact that very often the prolonged pre-trial investigations lead to the discontinuation.¹³²

6.1.3. The criminal trial stage

The second stage in the criminal procedure is case hearing before the court.¹³³ (see Annex 4.) Once the prosecutor decides that there is enough evidence to prove that the crime took place, he/she sends the case to the final stage – court hearing. The results in previous chapters reveal the challenges faced by environmental protection institutions, prosecutors and police. This section is going to analyze the obstacles experienced by the judiciary in Lithuania.

The interviewed judge as well as the majority of other interviewees have expressed their doubt whether the administrative sanctions are appropriate in all of the cases and whether they can create the sufficient deterrent effect. Moreover, the research also revealed that more than a half of the respondents believe that the severity of criminal sanctions applied by the courts in Lithuania are not likely to reflect the gravity of environmental criminal acts and therefore do not seem to deter from environmental law violations effectively. As interviewed journalists stressed:

The most common type of sanction applied for environmental offences is fine, meanwhile other types of punishment are rarely applied. (see Table 7. Annex 3.) The polluter does not pay enough in Lithuania! It is obviously that very often the offender pays substantially less than he/she profits from a crime.

The previous sections aimed to explain why enforcement institutions, in cases of environmental law violations, tend to more often apply administrative rather than criminal penalties. The following sub-section will focus on the reasons why the courts of Lithuania fail to apply the adequate sentences for environmental criminals.

6.1.3.1. The causes of inadequate sanctioning

To begin with, even though the majority of interviewees agreed that there are issues connected to the clarity of the regulations in the environmental criminal law field, however, the interviewed judge emphasized that the legislation cannot cover all possible cases. According to him:

¹³⁰ Ibid.

¹³¹ Keel, R.O. (2005). *Rational Choice and Deterrence Theory*.

¹³² Prosecution Service of the Republic of Lithuania. The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. June 1, 2007.

¹³³ Criminal Procedure Code of the Republic of Lithuania.

'Such concepts as 'major harm', 'serious threat to a large number of people' and etc. are very common in criminal law and the judges are obliged interpret the norms according to particular circumstances.'

However, the interviewed environmental lawyer argued that in other cases, for example, in case of property crimes, the Criminal Code has a separate article stating what should be considered as a big, medium or small theft.¹³⁴ The interviewed judge partially agreed with this statement and admitted that the scarcity of the guidance in the legislation might be one of the causes why the courts tend to reduce the sanctions.

Another big issue the interviewed judge brought up was the lack of experience in handling environmental criminal cases. According to many respondents, this is not surprising at all because environmental criminal cases reach the courts on relatively rare occasions. Moreover, the number of respondents pointed out that infrequency of environmental criminal cases coming before courts prevents from establishment of legal precedent which might provide sentencing guidance for judiciary.

Furthermore, together with the issue of the lack of experience, the lack of expertise in the environmental field is highly discussed among the various authors. 'Environmental crime, being a broad and diffuse area of offence, whose gravity is not at first always evident, presents many challenges to those authorities tasked with dealing with it.'¹³⁵ Judges are not the exception. In order to apply the appropriate sanction, judges have to understand the gravity of damages for environment caused by environmental crime; that however requires specific knowledge in the environmental field, which according to the majority of the respondents is likely to be not sufficient among the judiciary in Lithuania at the moment.

In addition, several interviewees emphasized that the reason why courts have to discontinue cases or apply less severe sanction is due to the fact that the prosecutors fail to present enough or sufficiently reliable evidence proving the guilt. For example, as it was stated in one of the cases of the Supreme Court of the Republic of Lithuania:

*'The actual environmental damage, its nature and size can be determined only on the basis of qualified professional conclusions, but the prosecutor did not use this type of evidence. According to the Court, basing the environmental damage calculations only on the theoretical calculations without the throughout factual examination of the crime scene cannot represent the real harm caused to the nature.'*¹³⁶

However, the prosecutors are reasoning that by the fact that in some cases the public environmental protection agencies are not qualified for performing certain examination and therefore, they have to apply to the private companies that have the necessary qualifications and equipment for executing the throughout investigation of the crime scene. That would not be an issue with the sufficient funding. However, the interviewed officials clearly emphasize the scarcity of the financial and human resources dedicated to the environmental protection field.

¹³⁴ Article 190. 'Interpretation of the Value of a Property'. Criminal Code of the Republic of Lithuania.

¹³⁵ House of Commons, UK. (2004). *Environmental Crime and the Courts*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. (p.p 670-691). UK, Willan Publishing. p. 676.

¹³⁶ E.L and UAB "L" v. State, [2009], No.2K-156, Category: 2.4.7;2.3.6.4.5.1 (S). The Supreme Court of Republic of Lithuania.

Another big issue brought up by the number of interviewees is the failure to ensure the proper compensation for environmental damages caused by the crime. As the Report of the Prosecution Service in 2007 concludes:

*'Unauthorised forest logging was the most often committed environmental crime in Lithuania in 2006-2007. However, only in half of the cases the environmental harm has been determined; meanwhile other acts were just qualified as thefts obliging the offender to compensate for the damages only to the owners of the forest. The application of the criminal sanction for the breach of the article 270¹³⁷ (Violation of the Regulations Governing Environmental Protection or the Use of Natural Resources) and the compensation for environmental damages is unfortunately forgotten in half of the cases. Prosecutors have to be aware that in these cases the criminal not only breaches article 178¹³⁸ (Theft) but also violates environmental protection laws (more particularly article 270) and therefore, has to answer for both crimes.'*¹³⁹

Even though very often environmental crime is perceived as 'victimless'¹⁴⁰, Brack emphasizes that 'unlike most other kinds of crime, it harms not just individual victims, but society as a whole'¹⁴¹. The problem in identifying the victim of environmental crime poses a risk that the 'rights of the environment' would not be protected. 'Environment is a concept, not a person'¹⁴²; therefore it needs representation from authorities ensuring the restoration of damages. In case when environmental damage occurred in somebody's property, the owner himself will most likely take actions to defend his/her interests and restore the environment; however, in cases where the owner cannot be identified (for example air pollution) the situation is much more complicated.¹⁴³ Even though, it is obvious that pollution is harmful to flora, fauna as well as humans, but to prove the causation between an incident and the particular damages (e.g. extinction of particular species or appearance of certain disease) is a very complicated task.¹⁴⁴ Therefore, sometimes the environmental criminals get away without paying the 'real' costs of their crime and therefore, without proper restoration of the environment.

It can seem relatively easy to evaluate the direct costs of environmental crime in merely economic terms; however, evaluation of indirect costs is much more difficult task.¹⁴⁵ For example, illegal discharges of waste can be quantified in economic terms by reference to the savings that operators have made through this activity and the cost of cleaning the polluted sites.¹⁴⁶ Meanwhile the assessment of indirect costs remains a challenge, because it raises a variety of questions, such as:

'What price can we place on the harm to the public health? How, and what price, can we quantify destruction of an area of countryside transformed into an illegal waste tip? How

¹³⁷ Criminal Code of the Republic of Lithuania.

¹³⁸ Criminal Code of the Republic of Lithuania.

¹³⁹ Prosecution Service of the Republic of Lithuania. The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. June 1, 2007.

¹⁴⁰ Environmental Investigation Agency. Environmental Crime – Our Planet, Our Problem. Retrieved May 22, 2010 from <http://www.eia-international.org/files/reports162-1.pdf>

¹⁴¹ Brack, D. (2002). *Combating International Environmental Crime*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*.

¹⁴² Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p.193.

¹⁴³ *Ibid.*, p.193.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*, p.196.

¹⁴⁶ *Ibid.*, p.196.

*do we evaluate the loss of biodiversity which probably occurs when a site is polluted by a waste discharge?*¹⁴⁷

Finally, several respondents not directly involved in environmental law enforcement emphasized that one of the reasons why environmental crime rarely commands much more than trivial treatment is a lack of concern for the protection of the environment and the conservation of natural resources within the judiciary as well as other enforcement institutions. As one of the interviewees pointed out:

'I believe that the legislators all over the world still favour the economic interests instead of environmental. Thus, the environmental regulations are still milder as necessary to 'really' protect the environment. Therefore, the fact that even milder rules in practice are not being followed completely should definitely be taken as a serious issue. Moreover, to my mind, in assessing the damages, the officials tend to underestimate them and fail to ensure that the reasonable compensation for the damages.'

6.2. Recommendations

'A crime without risk.'¹⁴⁸ According to Comte, it is very appropriate definition of environmental crime due the fact that criminal law enforcement institutions still have other – 'more pressing' – priorities, considering breaches of environmental law to be of minor importance.¹⁴⁹ Unfortunately this means that the institutions fail to ensure the quality of the enforcement and therefore the 'pains to be higher than gains'¹⁵⁰. Therefore, the research was aiming to study what possibly could be done in order to improve the enforcement performance in environmental protection field. Or in other words, how to ensure that environmental crime is perceived as a 'crime with risk'.

The section will present recommendations provided by the interviewees (see list in Annex 2), suggestions made by other researchers in the field, and examples from other countries. The author's intent is to analyze possible improvements in criminal enforcement of environmental law and discuss which of them are the most suitable and achievable in Lithuania at the moment.

6.2.1. Strengthening the legislation

To begin with, the main recommendation expressed almost by all of the respondents from Lithuanian institutions as well as widely accepted by other researchers is the need to fix deficiencies in the laws and provide with the clearer guidance for their application. The number of amendments of the Lithuanian Criminal Code in the years 2005 and 2009 show the increasing attention from the legislative bodies in fighting environmental crime, however, the experts indicate that there are still a number of legal loopholes to be fixed.¹⁵¹

¹⁴⁷ Ibid., p.196.

¹⁴⁸ Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p.195.

¹⁴⁹ Ibid., p.195.

¹⁵⁰ See Chapter IV.

¹⁵¹ Prosecution Service of the Republic of Lithuania. The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. February 10, 2010.

The majority of respondents emphasized the urgency to clarify the concepts in of ‘major damage’ to the fauna, flora or other ‘serious consequences’ to the environment. Several interviewees proposed to establish the separate article in the Criminal Code that would provide with interpretation on what could be considered as a ‘major damage’ or ‘serious consequences’.

Moreover, some respondents also pointed out the need to constitute the law establishing the public agency obliged to assess the damage to the nature. According to the interviewees the previously described measures are likely to contribute drawing the clearer distinction between the Code of Administrative Offences and the Criminal Code.

Some authors suggest that the codification of environmental legislation might have positive results bringing more clarity in its application. For example, Swedish Environmental Code¹⁵² adopted in 1999 by many authors is considered to be an achievement making the application of environmental legislation clearer and therefore more stringent.

Furthermore, many authors believe that the deficiencies existing in the legislation can also be improved with a better cooperation between the enforcement institutions. Agencies that interact more often can develop strategies for streamlining their handling of environmental violations.¹⁵³ Some plausible efforts have been made in Lithuania¹⁵⁴, however, according to the several respondents, cooperation in the country is still more an exception than a rule.

6.2.2. Strengthening the initiation of the environmental criminal procedure

First of all, in order to increase the levels of initiation of the environmental pre-trial investigations the Lithuanian authorities emphasized the need of the higher control over the discretion of institutions responsible for the crime reporting. For example, one of the explanations why in Sweden the numbers of reported environmental crimes¹⁵⁵ are obviously higher than in Lithuania could be that in Sweden the officials perceive real threat of being punished for not reporting the environmental criminal act. The fact that the failure to report may actually lead to the sanction is an important factor in forming his/her decision whether to report or not.¹⁵⁶ However, as one of the respondents from Lithuania’s environmental protection agency stated:

‘The high rates of reporting not necessarily have positive results, because sometimes it can even be considered as a waste of prosecutors’ time, due the fact that infringements are really small, but the inspectors are afraid of penalties.’

¹⁵² The Swedish Environmental Code (Miljöbalken)// (1998:808).

¹⁵³ Sundari Akella, A. and Cannon, J.B. (2004). *Strengthening the Weakest Links: Strategies for Improving the Enforcement of Environmental Laws Globally*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p. 550.

¹⁵⁴ In 2007 Prosecutor General formed the working group consisting of representatives from Prosecution Service of Lithuania and ministries of Environment and Justice for amending the following Codes: Criminal and Code of Administrative offences in connection to environmental legislation.

In 2009 meeting by the representatives from the following institutions: Ministry of the Environment, National Environmental Protection Inspection, Police and Prosecution Service.

In the year 2009 the cooperation agreements between the regional prosecution offices and the environmental protection departments were signed (Panevezys district prosecution office; Rokiskis regional prosecution office; Utena regional prosecution office).

¹⁵⁵ see Table 11. Annex 3

¹⁵⁶ Dahlammar, A.H. (2010, April 21). Personal interview.

Moreover, the issues connected to the double role of environmental protection agencies could be fixed by creating separate institutions responsible for the licensing-advising and supervising-repressing. According to Balandis, that is, however, hardly achievable task today due the scarcity of the financial resources.¹⁵⁷

Furthermore, according to the majority of respondents, society can also be an important player in tackling the environmental crimes by reporting them. Therefore, it is important to foster the idea within the individuals that environmental crime is as serious and dangerous as any other form of criminal activity. It is important to inform people about the gravity of environmental crime; or as Brack emphasizes that ‘unlike most other kinds of crime, it harms not just individual victims, but society as a whole’¹⁵⁸.

The literature suggests that the status of environmental crimes could be raised by a number of ways that all are closely interconnected. A first important step is raising public environmental awareness. A second step is to ensure the effective operation of criminal enforcement institutions. Meanwhile, the greater public interest in tackling environmental crimes might increase the pressure for the politicians and enforcement institutions to fulfill their duties more effectively.¹⁵⁹ As it can be seen raising status of environmental crime is a complex task involving a number of actors. However, addressing the underlying causes of the low status of the crime is the first and very important step.

6.2.3. Increasing expertise and experience of the enforcement officials

Apart from environmental education of the general society, the research reveals the need to increase the environmental knowledge among the police officers, prosecutors and judges. Training is one of the ways to encourage those involved in environmental cases to treat them more appropriately and seriously.¹⁶⁰ The need for special knowledge in investigating the environmental crimes as well as the complexity and size of the environmental regulations definitely require the effective workshops and seminars for the previously listed institutions.

Moreover, many interviewees stressed the necessity for more rigorous guidance for the institutions involved in environmental criminal law enforcement. However, as one of the law professor noticed:

‘Usually the guidelines on prosecution and sentencing are based on the court judgments. Unfortunately, the infrequency of environmental criminal cases highly interferes into the process of establishing the guidelines.’

In other words – the lack of judicial precedent prevents from creating the more rigorous guidance and that therefore results in the ‘great diversity of the sentences given for broadly similar cases across the country’¹⁶¹.

The law scholars accentuated the need of the comprehensive research in the field of environmental criminal law. As one of the respondents from Mykolas Romeris University stated:

¹⁵⁷ Balandis, D. (2010, January 12). Personal interview.

¹⁵⁸ Brack, D. (2002). *Combating International Environmental Crime*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*.

¹⁵⁹ Fortney, D. C. (2003). *Thinking Outside the ‘Black box’: Tailored Enforcement in Environmental Criminal Law*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. (p.p 692-715). UK, Willan Publishing. p. 693.

¹⁶⁰ House of Commons, UK. (2004). *Environmental Crime and the Courts*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p. 685.

¹⁶¹ Ibid., p. 676.

*'The academic research in the field can definitely help to trigger the attention of the public authorities that environmental crime is dangerous anti-social behavior that needs to be tackled. It could also contribute to the formation of the guidelines for the institutions responsible for environmental criminal enforcement.'*¹⁶²

Furthermore, several interviewees highlighted that increasing expertise of enforcement officials can help to achieve swifter criminal procedure for environmental crime. Swiftiness of the punishment is one of the conditions in ensuring the deterrence from committing an unlawful act. As analyzed in previous sections, in case of environmental crime it is crucial to ensure swift process due to the nature of the offence. (Sub-section 6.1.2.1.)

Additionally, the report conducted in 2003 suggests 'improving national statistics to track criminal case law'¹⁶³. Many interviewees noticed that the access to the statistics on environmental criminal procedures has been improved since 2003; however, the research revealed some remaining insufficiencies.

6.2.4. Creating separate institutions

Some authors go even further and suggest the establishment of separate institutions responsible dealing with environmental crimes. The majority of the interviewees as well as other authors certainly agree that this establishment would definitely lead to greater enforcement performance. However, they also express the fear that this reform is too costly for the countries. Moreover, as one of the respondents from environmental protection institution has argued:

'If we establish the environmental police units, environmental prosecutors or judges, then why don't we establish separate units for all crimes. That would require a lot of time and resources. Unfortunately, I believe that it is too luxurious for Lithuania at the moment.'

As one of the respondents suggested, the well-trained and experienced investigating and prosecuting bodies specializing in environmental cases can already bring about considerably visible advantages; therefore, the reform in the whole public administration system is not necessary. The UK Environmental Audit Committee agrees that professional prosecutors play an essential role in the criminal process.¹⁶⁴ They also stress that 'prosecutors must be encouraged to press persuasively for higher sentences and to use all the means at their disposal to call for a tougher sentencing'¹⁶⁵. The research has revealed that efforts has been made in Lithuania in establishing separate environmental police units¹⁶⁶ as well as establishing separate prosecutors specializing in environmental cases. However, the interviewees emphasized the need for more systematic and comprehensive change.¹⁶⁷

The worthy of note example in saving the financial and human resources is environmental prosecutors in Sweden. Since the numbers of environmental cases are not so high,

¹⁶² Piesliakas, V. (2010, January 6). Personal interview.

¹⁶³ Milieu Ltd. (2003). *Study on criminal penalties in a few candidate countries' environmental law. Final report.* p. 170.

¹⁶⁴ House of Commons, UK. (2004). *Environmental Crime and the Courts.* In White, R. (Ed.).(2009). *Environmental Crime: A Reader.* p.677.

¹⁶⁵ Ibid., p. 685.

¹⁶⁶ However, there is only one operating at the moment. Vilnius County Environmental Law Violations prevention police unit. 29 officers.

¹⁶⁷ Balandis, D. (2010, January 12). Personal interview.

establishing separate environmental prosecutors offices in every region would not be reasonable. Therefore, Swedish authorities have established so to call ‘traveling prosecutors’ that are being sent to particular region if there appears an environmental case. Since January 2000, environmental cases have been handled by about 20 specialized environmental prosecutors posted in six local units around Sweden accompanied by the trained police officers.¹⁶⁸

6.2.5. Increasing severity of sanctions

One more suggestion raised by several respondents was increasing the level of sanctions for the crimes against environment. Unfortunately, ‘raising formal limits for sentences can only be one part in the battle against environmental crime’¹⁶⁹. Therefore, the majority of the interviewees stressed that the effective practical use of the existing range of fines and custodial sentences needs to be encouraged. As the UK Environmental Audit Committee wisely noticed:

‘In a simple world, raising the maxima for environmental crimes in either or both of these areas might have the desired effect of deterring and properly punishing the offenders. As we have seen, however, the world of environmental crime is far from simple.’¹⁷⁰

Additionally, one of the interviewees from Mykolas Romeris University suggested that while increasing the sentences ‘on paper’ it is important not only to raise the maxima, but also the minimum sentence. Several interviewees have noticed that raising formal limits might increase the status of environmental offences. Nevertheless, it is obvious that together with the effective enforcement performance more noticeable results can be achieved.¹⁷¹

6.2.6. Corporate liability

Furthermore, another widely suggested recommendation by interviewees as well as other researchers is the need for governments to adopt much tougher stance with the corporations that flagrantly flouts the environmental laws.¹⁷² Many environmental crimes are caused by lazy, negligent or malicious individuals; however, usually the worst instances of such crimes are the responsibility of the corporations.¹⁷³ Corporations most often cause the most significant damage to the nature because of the scale of their operations.¹⁷⁴

First of all, taking into consideration low level of reporting on corporate environmental crimes in Lithuania¹⁷⁵, the interviewees stressed the need of a greater control over the environmental protection institutions responsible for reporting. Secondly, a number of respondents suggested the improvement of the current sentencing system. As discussed before, in many cases Lithuanian judiciary tends to mitigate the sanctions due the lack of experience in this type of

¹⁶⁸ OECD. (2004). Environmental Performance Reviews: Sweden. Retrieved 12 April, 2010 from www.oecd.org

¹⁶⁹ House of Commons, UK. (2004). *Environmental Crime and the Courts*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p.685.

¹⁷⁰ Ibid., p. 684.

¹⁷¹ Balandis, D. (2010, January 12). Personal interview.

¹⁷² House of Commons, UK. (2004). *Environmental Crime and the Courts*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p. 682.

¹⁷³ Ibid., p. 681.

¹⁷⁴ Bell, S. and McGillivray, D. (2008). *Environmental law*. p.312.

¹⁷⁵ During the year 2008-2009, the corporate liability has been upheld only 2 times.

cases. (see sub-section 6.1.3.1.) Therefore, many respondents strongly suggested that authorities while applying the sentence have to be aware of the fact that very often the companies claiming to have lack of money to pay a reasonable fine nevertheless achieve great profits from their crimes. As Comte explains:

*'Unfortunately, nowadays economic activity carried out by illegal means still allows the substantial profit margins to be made, far in excess of where the same economic activity is carried out within the confines of the legal regulatory regime. The same logic applies where an operator disregards any legal requirements regulating his activity (social, health, safety, environmental and etc.) which his competitors are subject to. He immediately finds himself with economic and competitive advantage.'*¹⁷⁶

Moreover, as interviewed journalists stressed:

The most common type of sanction applied for environmental offences is fine, meanwhile other types of punishment are rarely applied. (see Table 7. Annex 3.) The polluter does not pay enough in Lithuania! It is obviously that very often the offender pays substantially less than he/she profits from a crime.

The Theory of Rational Choice and Deterrence states that 'crime is a choice that is influenced by its costs and benefits – that is by its 'rationality''¹⁷⁷. Therefore, 'crime will be more likely to be deterred if its costs are raised'¹⁷⁸; otherwise, the mild sentencing might even encourage the crime. Therefore, the majority of the respondents suggested that the corporate environmental crimes can be tackled more effectively either by imposing higher monetary fines or by applying the alternative sanctions more often (such as restriction of operation of the legal entity or liquidation of the legal entity). Even though fines tend to hit companies' in their pocket, that pocket in many cases is very deep indeed, and alternative sentences may prove a better punishment and stronger deterrent.¹⁷⁹

The dissatisfaction with the application of existing criminal sanctions has influenced the development of alternatives to the traditional sanctions.¹⁸⁰ One of the earliest forms of unconventional sanctions was the 'naming and shaming' of corporate polluters through the media or other sources.¹⁸¹ Environmental crimes often fall under the category of white-collar crimes, where the informal criminal punishment is playing a significant role. Society's moral condemnation, 'which is most often considered to be the highest against those who violate criminal law'¹⁸², for corporation or other respectable individuals of high social standing, is threatening to their social image and that therefore, to all the benefits associated with it. The fear to lose those benefits therefore is likely to make them more vulnerable to informal punishment than regular citizens without high social standing.

The UK Environmental Audit Committee also points out:

¹⁷⁶ Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p. 195.

¹⁷⁷ Cullen, T.F. and Agnew, R. (2006). *Criminological Theory: Past to Present (Essential Readings)*. p.7

¹⁷⁸ *Ibid.*, p.7.

¹⁷⁹ House of Commons, UK. (2004). *Environmental Crime and the Courts*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p. 688.

¹⁸⁰ Bell, S. and McGillivray, D. (2008). *Environmental law*.

¹⁸¹ *Ibid.*

¹⁸² Reid, J.D. (2009). *Criminal Law, The Essentials*. p. 3.

*'Less is known about environmental crime than is often supposed. The idea of maintaining a national public database of environmental prosecutions to publicize the offenders and provide more consistency was raised by us in evidence.'*¹⁸³

According to a number of respondents as well as other researchers, information is crucial for two reasons: firstly, to pay the society's attention to this serious and widespread offence and secondly, to supply the relevant information to the authorities responsible for tackling the environmental crime. However, fortunately, the majority of respondents from Lithuania have noticed the positive changes in terms of publicity of environmental crimes. They have stressed the growing media attention towards the topic of environmental crime.

On the other hand, one of the respondents involved in Environmental Management Systems Auditing in Lithuania emphasized the need for more effective spread of information to companies before the environmental offence took place. As he perceptively recommended:

*'Yes, the companies can cause the most significant damage for the nature, however, in some cases it can happen just because of enormous complexity of environmental laws. Therefore, I strongly suggest the need for more effective spread of information on the environmental regulations to the corporations. That is especially applicable to the small businesses that do not have the separate divisions handling company's compliance to environmental regulations.'*¹⁸⁴

Corporate liability does create a deterrent effect; however, as discussed before, since the most common type of sanction for corporate offences are fines, for many corporations they do not result in any significant loss. Some respondents noticed that very often however, hiding behind a legal person is a successful strategy of the corporations' CEO's in order to prevent their personal criminal liability. Therefore, a lot of authors encourage prosecuting bodies to spend more time and resources on finding the principal offender hiding behind the corporate crime. On the other hand, some interviewees from Lithuania claimed that it in many cases requires too many financial and human resources that the country at the moment cannot provide.

One of the respondents from NGO even proposed that in case of corporate environmental crime, unlawfully acting company's criminal liability would automatically entail the liability of CEO, no matter what can be proven personally.¹⁸⁵

6.2.7. Stronger political will

Additionally, a number of interviewees suggested that at the moment in Lithuania environmental crime is not treated seriously enough neither by institutions of criminal justice nor by the highest governmental authorities. Therefore, the majority of the respondents emphasized the need of stronger political will in tackling the environmental crime in the country. As Brack suggests, the stronger political will in fixing the shortcomings in legislation and developing

¹⁸³ House of Commons, UK. (2004). *Environmental Crime and the Courts*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p.686.

¹⁸⁴ Kildisas, V. (2010, January 24). Online personal interview.

¹⁸⁵ Kiss Csaba (2010, January 29). Online personal interview.

reasonable crime prevention strategies is also a key factor contributing to more effective enforcement.¹⁸⁶

Another recommendation raised by the majority of the respondents was to increase the budgetary resources for environmental protection. Adequate budgetary resources help to ensure the ability of detection and investigation agencies, prosecutorial services, and the judiciary to fulfill their enforcement responsibilities more effectively.¹⁸⁷

Numerous authors also suggest that the crucial step in strengthening the enforcement performance is to take all possible measures in fighting the corruption. Several interviewees suggested that Lithuanian authorities should pay more attention in ensuring greater transparency in governmental agencies. That thus might yield a stronger deterrent against environmental crimes because individuals would perceive that there is less opportunity to hide the criminal activity behind the unofficial payments.

6.2.8. International cooperation

Finally, a number of interviewees emphasized that the importance of international cooperation in tackling environmental crime. There have been several efforts made in establishing the international networks¹⁸⁸ of environmental enforcement agencies aiming to improve information exchange and investigative cooperation among the law enforcement agencies.¹⁸⁹ However, a number of authors suggest that the resources and political will devoted to tackling the international environmental crimes is still not satisfactory. Therefore, as Brack perceptively suggests:

*'Greater cooperation between environmental protection agencies at the international, regional and national levels is very important. Intelligence gathering, information exchange, guidance (such as codes of the best practice) and training can all be coordinated and delivered effectively at international and regional level.'*¹⁹⁰

6.2.9. What is achievable at the moment?

All of the previously discussed measures might definitely contribute to the higher quality of environmental law enforcement. However, the author's intent was not only to explore the possible solutions but also discuss which of them might be practically achievable in Lithuania at the moment. Case study of Lithuania revealed that unfortunately, the amendments requiring high financial resources (such as establishment of separate enforcement institutions for tackling environmental crimes) are hardly achievable in Lithuania at present. However, the author believes that improvement of the legislation and training of enforcement officials are the most important and more or less financially attainable first steps for today. If these were accomplished

¹⁸⁶ Brack, D. (2002). *Combating International Environmental Crime*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*.

¹⁸⁷ Sundari Akella, A. and Cannon, J.B. (2004). *Strengthening the Weakest Links: Strategies for Improving the Enforcement of Environmental Laws Globally*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p. 552.

¹⁸⁸ The International Network for Environmental Compliance and Enforcement (INECE); The European Network on the Implementation and Enforcement of Environmental Law (IMPEL); INTERPOL's Environmental Crime Programme; The main actors involved: the United Nations Environment Programme (UNEP), the World Bank, the European Commission, the Organisation for Economic Co-operation and Development (OECD), World Customs Organisation (WCO) and Interpol.

¹⁸⁹ Brack, D. (2002). *Combating International Environmental Crime*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*.

¹⁹⁰ Ibid., p. 491.

it would trigger other positive changes (more environmental cases coming before courts, more severe sanctioning, swifter environmental criminal procedure as well as higher status of environmental crimes). In order to take those steps more effectively, it is greatly important to draw the society's and politicians' attention towards the importance of tackling environmental crime. In other words, it is crucial to increase the status of environmental crimes in the eyes of society, policy makers and implementers.

However, in order to make the previously mentioned improvements, it is important to foster further academic research in environmental criminal law field. International cooperation together with exchange of 'good practices' from other countries is also highly recommended.

VII. Concluding comments

1. The empirical findings confirm that there exist obstacles impeding the successful control over environmental criminal acts in Lithuania. The research revealed the following obstacles:

- Relative infrequency of environmental criminal cases coming before the courts (caused by the insufficiency in initiation of the environmental criminal procedure and the relatively high numbers of dismissed environmental criminal pre-trial investigations);
- Prolonged environmental criminal procedures;
- Inadequate penalties.

Following the Theory of Rational Choice and Deterrence, the previously listed barriers undermine the enforcement system's capacity to ensure certain, severe and swift punishment for environmental crime. This therefore, sends a signal to the potential criminals that the 'target is not fully protected'. As a consequence, findings suggest that enforcement institutions in Lithuania still struggle in fully ensuring the deterrence from environmental criminal acts.

2. The underlying causes undermining the system's capacity to ensure certain, swift and severe punishment are the following:

- Inadequate legislation; 'When laws are weak in their language and, or limited in their coverage, they become open to interpretations and legal loopholes, making them difficult to enforce.'¹⁹¹
- Insufficient enforcement quality due the lack of the special knowledge, skills, personnel and special equipment. All previously mentioned drawbacks are induced by the inadequate budgetary resources.
- Scarcity of experience of enforcement bodies in handling environmental criminal cases.
- Lack of cooperation between authorities.
- Low status of environmental crime. The fact that society still does not consider environmental crime as a very serious offence discourages enforcement institutions to tackle it more effectively. However, low public concern of tackling environmental crime

¹⁹¹ Sundari Akella, A. and Cannon, J.B. (2004). *Strengthening the Weakest Links: Strategies for Improving the Enforcement of Environmental Laws Globally*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. p. 561.

can also be considered as an outcome of a weak environmental enforcement. Because the light-handed treatment of environmental crimes by enforcement institutions first of all does not create deterrence from offending and secondly, does not encourage the citizens to report the suspected environmental crimes.

- Complicated nature of environmental crime which makes it hard to detect, investigate and assess the harm.

3. The failure in one section of the enforcement 'chain' brings negative consequences to other ones and therefore to the successful insurance of certainty, severity and swiftness of the punishment. Unfortunately, the research in Lithuania revealed that both analyzed stages (pre-trial investigation and criminal trial) of the environmental criminal procedure are experiencing certain obstacles that undermine the system's capacity to ensure certain, severe and swift punishment.

5. There exist a great number of options for improving the criminal enforcement of environmental regulations. The positive finding is that the institutions involved in environmental criminal law legislation and enforcement in Lithuania admit the existence of the barriers and have already taken several steps in treating this type of crime more seriously.

7.1. Further studies

To begin with, the authorities involved in criminal enforcement of environmental law in Lithuania suggest the society's ignorance towards environmental crimes. However, any generalizations whether Lithuania's citizens really feel this way cannot be made, because this finding is only based on the perceptions of around 20 interviewees that in one or another way are connected to environmental protection. Therefore, in order to be able to make any generalizations about Lithuanian society's perceptions towards environmental crimes, further studies that involve greater number of citizens would be necessary. Moreover, it would be interesting to examine how the Lithuania's society perceives the existing sanctions for environmental crimes: whether they seem to be deterrent enough?

Secondly, the author believes that comparative study between countries in the same region or even from different regions might be relevant. This is because it might help to indicate the 'leaders in the field' and foster the exchange of good practices. However, many authors emphasize that in order to detect those 'leaders' there is a need to conduct a comprehensive in-depth study in each of the country and only 'dry' examination of statistical data on environmental criminal procedure is not enough. 'Since the methods of recording criminal activity are organized at a national level, comparisons between the statistics of different countries are difficult to make and can lead to inexact conclusions.'¹⁹² First of all, this is because sometimes countries tend to categorize crimes differently. Secondly, the number of environmental criminal cases also highly depends on the country's legal system.

Furthermore, more detailed analysis of how the environmental laws and regulation are harmonised in Lithuania would be beneficial. This could help detect other possible legal loopholes; fixing of which could make the laws more uniform and coherent.

Additionally, due the time and scope constraints, the study only revealed the issues experienced in the first two stages of the criminal procedure; therefore, the exploration of the sanction execution stage would also be plausible.

¹⁹² Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p. 197.

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Glossary

Aggravating circumstances – ‘circumstances that make the crime worse’¹⁹³.

Administrative detention – administrative penalty used only in exceptional cases not exceeding more than thirty days.¹⁹⁴

Crime – ‘is illegal act or omission which may result in prosecution and punishment by the state if the accused is convicted. Generally, in order to be convicted of a crime, the accused must be shown to have committed an unlawful act (Actus Reus) with a criminal state of mind (Mens Rea)’¹⁹⁵. According to the Criminal Code of Lithuania, ‘a crime is a dangerous act (act or omission) forbidden under this Code and punishable with a custodial sentence. Crimes can be committed with intent and through negligence. Premeditated crimes are divided into minor, less serious, serious and grave crimes’¹⁹⁶.

Criminal act – ‘crime or misdemeanour’¹⁹⁷.

Criminal detention – ‘arrest imposed for a period from 15 up to 90 days for a crime and from 10 to 45 days for a misdemeanour’¹⁹⁸.

Criminal enforcement ‘chain’ – the system of institutions involved in criminal procedure. (see Annex 4.)

Criminalization – ‘the process whereby criminal law is selectively applied to social behavior. It involves the enactment of legislation that outlaws certain types of behavior and provides for surveillance and policing of that behavior and, if behavior is detected, for punishment’¹⁹⁹.

Criminal justice system – ‘an elaborate system used to deal with those who violate criminal laws’²⁰⁰.

¹⁹³ Collin, P.H. (2004). *Dictionary of Law*.

¹⁹⁴ Code of Administrative Offences of the Republic of Lithuania.

¹⁹⁵ Collin, P.H. (2004). *Dictionary of Law*.

¹⁹⁶ Criminal Code of the Republic of Lithuania.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Beirne, P. and Messerschmidt, J. (2000). *Criminology*. USA, Westview Press, A Member of the Perseus Book Group. p.509.

²⁰⁰ Ibid., p. 509.

Criminal law – ‘rules enacted by legislatures or that result from judicial decisions that protect members of the public from state definitions of wrongdoing’²⁰¹.

Criminal liability – ‘the fact of being responsible for a criminal act that has been committed’²⁰².

Criminal Procedure/Process – ‘is a set of rules according to which the substantive law is administered and which main objective is to ensure a fair and just process in the determination of guilt or innocence’²⁰³.

Criminology – ‘an interdisciplinary science that gathers and analyzes data on crime and criminal behavior’²⁰⁴.

Enforcement – ‘the process of making sure that something is done or obeyed’²⁰⁵.

Environmental protection institutions – ‘the institutions responsible for administrative enforcement of environmental laws in Lithuania. That is:

1. The State’s Environmental Protection Inspectorate under the Ministry of Environment – on the national level and
2. 8 Regional Environmental Protection Departments and their subordinated 56 Local Environmental Protection Agencies – on regional and local levels’²⁰⁶.

Fixed-term Imprisonment – ‘the penalty imposed for a period from three months up to ten years. In the case of imposing the penalty according to Article 64 of the Criminal Code of Lithuania, when a new crime is committed before a sentence for the previous crime is served, a custodial sentence for a period of up to 25 years may be imposed’²⁰⁷.

Indictment – ‘a written statement of the details of the crime with which someone is charged in the court’²⁰⁸.

Legal person – ‘company or corporation considered as a legal body’²⁰⁹.

Life imprisonment - the custodial sentence that is not less than 25 years.²¹⁰

Misdemeanor – ‘a dangerous act (act or omission) forbidden under the Criminal Code of the Republic of Lithuania which is punishable by a non-custodial sentence, with the exception of arrest’²¹¹.

²⁰¹ Beirne, P. and Messerschmidt, J. (2000). *Criminology*. p. 509.

²⁰² Collin, P.H. (2004). *Dictionary of Law*.

²⁰³ Pringle, A. (2010). *Criminal Procedure*. Retrieved April 9, 2010 from

<http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0002023>

²⁰⁴ Walsh, A. and Ellis, L. (2007). *Criminology: an Interdisciplinary Approach*. p.449.

²⁰⁵ Collin, P.H. (2004). *Dictionary of Law*.

²⁰⁶ Law on the State Control of Environmental Protection of the Republic of Lithuania.

²⁰⁷ Criminal Code of the Republic of Lithuania.

²⁰⁸ Collin, P.H. (2004). *Dictionary of Law*.

²⁰⁹ Ibid.

²¹⁰ Criminal Code of the Republic of Lithuania.

Mitigating circumstances – ‘things which make a crime less serious or which can excuse a crime’²¹².

Natural person – ‘a human being, as opposed to a legal or artificial ‘person’ such as company’²¹³.

Ne bis in idem (or **non bis in idem**) – ‘principle also known as the **double jeopardy** rule. The principle is that no-one may be prosecuted or convicted twice for the same facts or the same punishable conduct’²¹⁴.

Negligence – ‘the failure to give proper care to something, especially a duty or responsibility, with the result that a person or a property is harmed’²¹⁵.

Pre-trial investigation – ‘the process of establishing whether or not an offence has actually been committed, under what circumstances it occurred and the identity of the parties concerned. The pre-trial investigation also aims to establish the extent of the injury or damage caused by the offence, the gain affected by the offender and the demands of the injured party’²¹⁶. Pre-trial investigation may lead to:

- a. indictment or
- b. discontinuation.²¹⁷

Prosecution – ‘the act of bringing someone to the court to answer a criminal charge’²¹⁸.

Restriction of liberty – ‘persons sentenced to restriction of liberty are obliged: not to change their place of residence without the knowledge of the court or the body responsible for the execution of the penalty; to comply with prohibitive and mandatory injunctions of the court; and to give an account in the prescribed manner of compliance with the prohibitive and mandatory injunctions of the court. The court may require that the offender *inter alia* make payments in partial or full restitution for damage caused by the crime or misdemeanor or to repay the damages with his own work. Restriction of liberty may be imposed for a term from 3 months to 2 years’²¹⁹.

²¹¹ Criminal Code of the Republic of Lithuania.

²¹² Collin, P.H. (2004). *Dictionary of Law*.

²¹³ Ibid.

²¹⁴ The European Commission’s Green Paper COM(2005) 696 of 23 December 2005 on conflicts of jurisdiction and the principle of *ne bis in idem* in criminal proceedings.

²¹⁵ Collin, P.H. (2004). *Dictionary of Law*.

²¹⁶ Finnish Police. Retrieved May 14, 2010 from <http://www.poliisi.fi/poliisi/home.nsf/pages/F45AFBBF41232095C2256BBA0037A0E2?opendocument>

²¹⁷ Code of the Criminal Procedure of the Republic of Lithuania.

²¹⁸ Collin, P.H. (2004). *Dictionary of Law*.

²¹⁹ Milieu Ltd. (2003). *Study on criminal penalties in a few candidate countries’ environmental law. Final report*.

Annex 1. Interview guide

1. Introduction

The term 'environmental crime' is a relatively new addition to the criminal law lexicon. Most commonly environmental law enforcement is associated with administrative or civil enforcement measures; however, over recent decades the political focus has been increasingly directed towards the use of criminal penalties as the means to control environmentally hazardous activities. Even though it can be noted that European Union Member States' authorities put a greater effort in increasing the severity of sanctions for environmental criminal acts, unfortunately, studies conducted in 2003-2004 have shown great deficiencies in the enforcement.

Therefore, all EU Member States are tasked with strengthening the criminal enforcement of environmental law at the national level. Lithuania is no exception. The scarcity of the research on the environmental criminal enforcement topic in the country calls for the need of further researches in the area that is considered to be a challenge in most of the countries.

Lithuanian Report to the European Commission in 2003 indicated numerous institutional issues connected to environmental criminal law enforcement. It concluded that the criminal sanctions for environmental offences in the year 2003 and before were applied on a very rare occasions. Unfortunately, the current statistical data on the frequency and speed of the environmental criminal procedure, as well as the severity of sanctions for environmental crimes in Lithuania, still seem to indicate the existence of possible barriers to the successful functioning of environmental criminal enforcement institutions. However, any conclusions without an in-depth analysis cannot be made. Therefore, the study is aiming to explore whether there are barriers in the environmental criminal law enforcement system in Lithuania and if yes, the aim is to name them as well as to find the possible causes of them. Moreover, the study aims to provide with the recommendations that could possibly improve the enforcement performance.

2. Main interview questions

A. The respondents directly involved in environmental criminal law enforcement:

1. In order for punishment to yield a sufficiently deterrent effect, the enforcement institutions have to ensure a relatively high degree of certainty, swiftness and severity of it. In your opinion, how are those three criteria fulfilled in Lithuania?
2. Does the institution you work in experience any barriers in connection to criminal enforcement of environmental laws? If yes, what are the barriers?
3. What steps have been taken to overcome the barriers (by your institution and by other authorities)?
4. What do you think could be done in order to solve the issues your institution experiences in connection to criminal enforcement of environmental law?

B. The respondents involved in legislation:

1. In order for punishment to yield a sufficiently deterrent effect, the enforcement institutions have to ensure a relatively high degree of certainty, swiftness and severity of it. In your opinion, how are those three criteria fulfilled in Lithuania?

2. Are you aware of any barriers the institutions involved in criminal enforcement of environmental law face? If yes, what do you think they are?
3. What steps has the institution you work in taken in order to overcome the barriers?
4. What steps have been taken in transposing the Directive on ‘the protection of environment through criminal law’? (Since the deadline of transposing is in December 2010).
5. What do you think could be done to improve weaknesses in criminal enforcement of environmental laws in Lithuania?

C. The respondents that are not directly involved in legislation or enforcement of environmental criminal laws:

1. In order for punishment to yield a sufficiently deterrent effect, the enforcement institutions have to ensure a relatively high degree of certainty, swiftness and severity of it. In your opinion, how are those three criteria fulfilled in Lithuania?
2. Are you aware of any barriers the institutions involved in criminal enforcement of environmental laws face? If yes, what do you think they are?
3. Are you aware of any efforts to overcome these barriers? If yes, what are they?
4. What do you think could be done to improve weaknesses in criminal enforcement of environmental laws in Lithuania?

D. The respondents from other countries:

1. In order for punishment to yield a sufficiently deterrent effect, the enforcement institutions have to ensure a relatively high degree of certainty, swiftness and severity of it. In your opinion, how are those three criteria fulfilled in your country?
2. Are you aware of any barriers the institutions involved in criminal enforcement of environmental law face? If yes, what do you think they are?
3. Are you aware of any efforts to overcome these barriers? If yes, what are they?
4. What would be your recommendations for strengthening criminal enforcement of environmental laws in your country and in general?

Annex 2. Respondents

The respondents directly involved in environmental criminal law enforcement	The respondents involved in legislation	The respondents that are not directly involved in legislation or enforcement of environmental criminal laws (in Lithuania)
<ol style="list-style-type: none"> 1. R. Beinoravicius. The State Environmental Protection Inspectorate under the Ministry of Environment. Head of Nature Protection and Pollution Control Division. 2. T. Bazevicius. Vilnius Regional Environmental Protection Department. Head of Forest Management Department. 3. Vilma Verikaite. Vilnius Regional Environmental Protection Department. Specialist in the Waste Management Control Division. 4. V. Gramauskas. Trakai Local Environmental Protection Agency. Senior specialist. 5. T. Gauronskis. The State Environmental Protection Inspectorate under the Ministry of Environment. Head of Law and Staff Department. 6. Vladimiras Jankoit. The head of Vilnius County Environmental Law Violations prevention police unit. 7. Mindaugas Gylys. Prosecutor in Prosecution office of the Republic of Lithuania. Pre-trial investigation control department. 8. V. Piesliakas. Professor. Mykolas Romeris University. Head of Criminal law department. The judge in The Supreme Court of Lithuania. 	<ol style="list-style-type: none"> 1. J. Urbanavicius. The member the Parliament Committee of Environmental Protection. 2. Agne Murauskaite. The head of Law application department of the Ministry of the Environment. 3. S. Bikelis. PhD. Lecturer in Mykolas Romeris University Criminal Law Department. The head of Criminal Justice Research Division of Law Institute. 	<ol style="list-style-type: none"> 1. Domas Balandis. D. Balandis law office. 2. Rasa Uselyte. Project manager in ‘Ekokonsultacijos’ Environmental consultancy. 3. V. Kildisas. Lecturer in the Institute of Environmental Engineering in Kaunas Technology University. Cleaner production and environmental management expert, Environmental Management Systems Auditor. 4. Sandra Kučinskienė. Journalist. 5. Daumantas Butkus. Journalist. 6. Kiss Csaba. PhD. Director of EMLA (Environmental Management and Law Association in Hungary. Foundation for Environmental Education). <i>a non-profit non-governmental organization.</i> 7. Inga Belmane. Latvian Pollution Prevention Centre (LPPC) 8. Andrea Hjärne Dalhammar. Legal advisor at City of Malmö, Environmental Department. 9. 9.I. Lazdinis. Associate professor. Mykolas Romeris University. The head of Department of Environmental Policy and Management. Former minister and vice-minister of Environment.

Annex 3. Statistical tables

Table 1. Registered environmental criminal acts in Lithuania 2005-2009.

Years	Registered criminal acts a year	Crimes	Misdemeanors
2005	55	39	16
2006	38	30	8
2007	41	31	10
2008	59	27	32
2009	102	62	40

Source: Data taken from IRD. Retrieved January 12, 2010 from www.vrm.lt

Table 2. Finalized and discontinued pre-trial investigations in Lithuania 2008-2009

Type of criminal act	Finalized pre-trial investigations	Discontinued pre-trial investigations
Against Environment	94	37
Against economy and business order	2168	441
Disposal of narcotic or psychotropic materials	3764	439

Source: Data taken from IRD (retrieved January 12, 2010 from www.vrm.lt) and LRGP²²⁰.

Table 3. Number of environmental²²¹ criminal cases in the courts of Lithuania 2005-2009

Year	Cases brought to courts	Cases discontinued in the courts
2005	27	1
2006	19	-
2007	22	-
2008	24	2
2009	39	10

Source: Data taken from NTA. Retrieved February 23, 2010 from www.teismai.lt

Table 4. Crimes and misdemeanors against ownership, property rights and property interests²²² 2005-2009. Criminal cases brought to the courts of Lithuania.

Year	Cases brought to courts
2005	8723
2006	7965
2007	7191
2008	7225
2009	8155

Source: Data taken from NTA. Retrieved February 12, 2010 from www.teismai.lt

²²⁰ Prosecution Service of the Republic of Lithuania . The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. February 10, 2010.

²²¹ Articles 270-274 in the Criminal Code of the Republic of Lithuania.

²²² Articles 178 – 190 in the Criminal Code of the Republic of Lithuania.

Annex 3. Statistical tables

Table 5. Crimes and misdemeanours against the economy and business order²²³ 2005-2009. Criminal cases brought to the courts of Lithuania.

Years	Cases brought to courts
2005	906
2006	726
2007	596
2008	519
2009	798

Source: Statistical data from NTA. Retrieved February 12, 2010 from www.teismai.lt

Table 6. Crimes and misdemeanours related to the disposal of narcotic or psychotropic materials²²⁴ 2005-2009. Criminal cases brought to the courts of Lithuania.

Years	Cases brought to court
2005	889
2006	973
2007	1002
2008	1010
2009	1318

Source: Data taken from NTA. Retrieved February 12, 2010 from www.teismai.lt

Table 7. Criminal sanctions applied 2008-2009 (for the criminal acts covered by articles 270-274 in the Criminal Code of Lithuania)

Sanction	2008	2009
Fine	26	17
Fixed-term imprisonment	1	1
Arrest	1	2
Restriction of liberty	7	8
Community service	1	3
Property confiscation with penalty	2	1

Source: Data taken from NTA. Retrieved January 14, 2010 from www.teismai.lt

Table 8. Number of registered administrative environmental offences in Lithuania 2005-2006

Year	No. of reported administrative environmental offences
2005	18818
2006	19119

Source: Data taken from VAAI. Retrieved January 12, 2010 from www.am.lt

²²³ Articles 199 – 212 in the Criminal Code of the Republic of Lithuania.

²²⁴ Articles 259-261 in the Criminal Code of the Republic of Lithuania.

Annex 3. Statistical tables

Table 9. Number of natural persons convicted of environmental crimes in Lithuania 2005-2009. Criminal liability.

Year	No. of natural persons convicted
2005	20
2006	24
2007	8
2008	36
2009	31

Source: Data taken from NTA. Retrieved January 14, 2010 from www.teismai.lt

Table 10. Numbers of environmental criminal pre-trial investigations in Lithuania 2008-2009

Article	Pre-trial investigations started in 2008	Pre-trial investigations started in 2009
256	0	0
257	0	2
267	3	1
270	42	57
270 ¹	0	0
271	2	7
272	10	13
273	3	9
274	0	0

Source: Data taken from LRGP²²⁵.

Table 11. Reported environmental crimes in Lithuania and Sweden 2005, 2007.

Year	Lithuania	Sweden
2005	55	3620
2007	41	4771

Source: Data taken from BRÅ²²⁶ and from IRD (retrieved February 12, 2010 from www.vrm.lt).

²²⁵ Prosecution Service of the Republic of Lithuania. The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania. February 10, 2010.

²²⁶ The Swedish National Council for Crime Prevention. Crime trends in Sweden until 2007 [Brottsutvecklingen i sverige fram till år 2007]. 2008. Retrieved April 12, 2010 from http://www.bra.se/extra/measurepoint/?module_instance=4&name=Brottsutvecklingen_webb.pdf&url=/dynamaster/file_archive/081121/8f40c6556f4fb0fbc0a2d4af6994353/Brottsutvecklingen%255fwebb.pdf

Annex 4. Administrative, Criminal and Civil enforcement of environmental law

Administrative enforcement of environmental law	Criminal enforcement of environmental law
<p>The Law on Public Administration²²⁷, the Code of Administrative Offences and the Law on Administrative Procedures²²⁸ are the main sources of administrative law. The Code of Administrative Offences sets out the administrative sanctions for administrative violations in major areas which are regulated by administrative law, e.g. work place safety, customs, traffic control and environmental protection.²²⁹ All administrative sanctions for violations of environmental law are included in the Code of Administrative Offences. The Code of the Administrative Offences deals with the offences which constitute punishable breaches of law, but do not affect society to the extent that would deserve criminal law to be applied. The Code of Administrative Offences establishes list of administrative penalties²³⁰:</p> <ul style="list-style-type: none"> • A warning; • A fine; • Deprivation of right to hold certain position; • Deprivation of certain rights (licenses); • Confiscation of property used as an instrument or a means to commit the offence or which is acquired as a direct result of an offence; • Administrative detention. <p>The Law of State Control of Environmental Protection establishes the institutions responsible for administrative enforcement of environmental laws. That is:</p> <ol style="list-style-type: none"> 1. The State Environmental Protection 	<p>According to the Code of the Administrative Offences, the administrative enforcement authorities are obliged to report the infringements to the police or public prosecution authorities on the grounds of suspicion that a criminal offence has been committed. In case of environmental infringement the environmental protection institution is responsible for submitting the official report to pre-trial investigation officials. Upon receipt of an official report the pre-trial investigation institution decides whether there is a basis to start pre-trial investigation. A prosecutor or an officer of a pre-trial investigation institution may refuse to start a pre-trial investigation only where the facts stated in the official report about the criminal act are totally unconvincing; otherwise the Code of Criminal Procedure (CCP) requires the prosecutor or vested pre-trial institution to commence pre-trial investigation at the earliest opportunity. Moreover, prosecutors have a right to start the pre-trial investigation on their own initiative.(Article 166 of the CCP)</p> <p>Furthermore, according to the Code of the Criminal Procedure, the individuals or the groups also have a right to report the environmental infringement to the pre-trial investigation institution. Within its competence the institution can either start the pre-trial investigation if relevant or to send the case to the environmental protection institution for application of penalties in accordance with the Code of Administrative Offence.</p> <p>The pre-trial investigation can be finalized by indictment (Article 218 of the CCP) or might lead to the discontinuation (Article 212 of the CCP).</p> <p>The Criminal Code provides for some more severe sanctions for violation of environmental</p>

²²⁷ The Law on Public Administration of the Republic of Lithuania (Lietuvos Respublikos Viešojo Administravimo Įstatymas) // Official Gazette, 1999, Nr. 60-1945.

²²⁸ Law on Administrative Proceedings (Lietuvos Respublikos administracinės teisenos įstatymas) // Official Gazette, 1999, No. 13-308.

²²⁹ Balandis, D. (2004). *Study on measures other than criminal ones in cases where environmental community law has not been respected in a few candidate countries. National Report Lithuania.*

²³⁰ Article no.21. Code of Administrative Offences of the Republic of Lithuania.

<p>Inspectorate under the Ministry of Environment – on the national level and</p> <p>2. 8 Regional Environmental Protection Departments and their subordinated 56 Local Environmental Protection Agencies – on regional and local levels.</p> <p>According to the Law of Environmental Protection, employees of the Inspectorate, Departments and Agencies have status as the Environmental Protection Inspectors and have a right within their competence to control activities that may have impact on environment and have legal powers to apply administrative sanctions for most environmental administrative offences. In accordance with the Law on Administrative Proceedings, any decision made by Inspectors can be appealed to the Administrative Courts.</p>	<p>legislation than under administrative law. The Criminal sanctions are the following²³¹:</p> <ul style="list-style-type: none"> • Disqualification from a certain job or from holding certain position; • Deprivation of public rights; • Public work; • Fine; • Restriction of liberty; • Criminal detention; • Imprisonment. <p>The Process of Criminal Justice</p> <p>Criminal Procedure is a set of rules according to which substantive law is administered. Its main objective is to ensure a fair and just process in the determination of guilt or innocence.²³² The determination is made according to the principles that the societies have accepted as reflecting the proper balance between the value of protection of society and the value of individual freedom.²³³ The Criminal Procedure is usually divided into stages. The Code of the Criminal Procedure of the Republic of Lithuania distinguishes the following stages of the criminal justice process:</p> <ol style="list-style-type: none"> 1. The pre-trial investigation (Articles 164-220 of the CCP); 2. The trial (Articles 221-310 of the CCP); (Articles 311-334 of the CCP); (Articles 366-386 of the CCP); 3. The sentence execution stage (Articles 335-365 of the CCP). <p>The optional stages are the appeal (Articles 311-334 of the CCP), the cassation (Articles 366-386 of the CCP) and the renewal of finalized criminal proceedings (Articles 443-461 of the CCP).</p> <p>Different institutions are responsible for fulfilling the aims of each criminal case stage and ensure the fluent law enforcement process. To begin with, the main</p>
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²³¹ Article no.42. Criminal Code of the Republic of Lithuania.

²³² Pringle, A. (2010). *Criminal Procedure*.

²³³ Ibid.

	<p>bodies in pre-trial investigation are the prosecutor (responsible for managing and supervising the investigation) and the police (responsible for pursuing the investigation) as well as other agencies listed in the article 165 of the Criminal Procedure Code of Lithuania. Secondly, the main enforcement bodies during the trial procedure are the courts of the Republic of Lithuania.²³⁴ Finally, the bodies of order execution are The Bailiff Office, The Prison Department and as well as other statutory institutions.²³⁵ Therefore, criminal procedure involves a number of phases as well as institutions responsible for fulfilling the phases' aims.</p>
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Civil enforcement of environmental law

The Law on Environmental Protection of Lithuania establishes the right to make legal claims for compensation of damage caused by unlawful environmental activities for the following persons: the legal and natural persons whose health, property, or interests have been damaged; as well as officers of the Department of Environmental Protection of the Republic of Lithuania, the procurator, and other public organizations, when damage has been done to the interests of the State. The main sources of civil law are the Civil Code²³⁶ and the Civil Procedure Code²³⁷ of Republic of Lithuania.

²³⁴ Article no.40. The Criminal Procedure Code of the Republic of Lithuania.

²³⁵ Section IV. The Code of the Execution of Penalties (Lietuvos Respublikos Bausmių vykdymo kodeksas)// Official Gazette 2002, Nr. IX-994.

²³⁶ The Civil Code of Republic of Lithuania (Lietuvos Respublikos civilinis kodeksas)// Official Gazette 2000, Nr. 74-2262.

²³⁷ The Civil Procedure Code of the Republic of Lithuania (Lietuvos Respublikos civilinio proceso kodeksas)// Official Gazette 2002, Nr. 36-1340.

Annex 5. Environmental criminal acts in Lithuania

The list of criminal offences is presented in the following articles of the Criminal Code of Lithuania:

1. Article 256. Unlawful Possession of Nuclear or Radioactive Materials or Other Sources of Ionising Radiation.
2. Article 257. Violation of the Regulations Governing Lawful Possession of Nuclear or Radioactive Materials or Other Sources of Ionising Radiation.
3. Article 267. Unlawful Possession of Highly Active or Toxic Substances.
4. Article 270. Violation of the Regulations Governing Environmental Protection or the Use of Natural Resources.
5. Article 270⁽¹⁾. Illicit Trade in the Substances Depleting the Ozone Layer.
6. Article 271. Destruction or Devastation of Protected Areas or Protected Natural Objects.
7. Article 272. Illegal Hunting or Fishing or Other Use of Wild Fauna Resources.
8. Article 273. Unauthorised Forest Logging or Destruction of Marshes.
9. Article 274. Unlawful Picking, Destruction, Handling or Other Possession of Protected Wild Plants, Fungi or Parts Thereof.
10. Article 310. Cruelty to animals.

Annex 6. Placing environmental crime

Environmental crime overlaps to a certain extent with all crime categories listed in the table below. However, none of these categories are exclusive. Each crime categories share their specific features, which make them harder or easier to investigate. The information on how the certain investigation issues were solved in other categories of crimes may provide with valuable information in solving the problems in the field of environmental crime.

Most often environmental crimes to larger or lesser extent are considered to fall under the following crime categories:

White-collar crimes	According to Conklin, white-collar crime ²³⁸ can be defined as ‘any illegal act, punishable by a criminal sanction, that is committed in the course of legitimate occupation or pursuit by a corporation or by otherwise respectable individual of high social standing’ ²³⁹ White collar crimes go largely undetected; however, the informal punishment – publicity – is playing significant role in deterring from the crime. Even though by many characteristics environmental crimes fall within the parameters of white-collar crimes, it should be borne in mind that in many cases the environmentally unfriendly actions by general populace are unfortunately underestimated. ²⁴⁰
Corporate crimes	White-collar crime that is part of a collective and organized effort to serve the economic interests of a corporation is known as corporate crime. ²⁴¹ A corporation is defined as a legal entity or structure created under the authority of the laws of a state, consisting of a person or group of persons who become shareholders; its existence is considered separate and distinct from that of its members. ²⁴² ‘A number of illegal and deviant acts have become institutionalized practices among certain corporations that pollute, dump toxic waste and make environmental crime victims of various global minorities.’ ²⁴³
Organized crimes	Environmental crimes often fall under the category of organized crimes that are certain unlawful activities of any group of individuals whose primary activity involves violating criminal laws to seek illegal profits. ²⁴⁴ Same as in the case of corporate crimes, the harm caused by organized crimes is most often more severe than from individual crimes. According to the conclusions made by Prosecution Service of the

²³⁸ The major forms of white-collar crime include fraud, bankruptcy fraud, bribery, insider trading, embezzlement, computer crime, medical crime, public corruption, identity theft, environmental crime, pension fund crime, consumer fraud, occupational crime, securities fraud, financial fraud, and forgery.

²³⁹ Conklin, J.E. (2001) as quoted in Herbig, F.J.W and Joubert, S.J. (2006). *Criminological Semantics: Conservation Criminology – Vision or Vagary?* In White, R. (Ed.).(2009). *Environmental Crime: A Reader*.

²⁴⁰ Herbig, F.J.W and Joubert, S.J. (2006). *Criminological Semantics: Conservation Criminology – Vision or Vagary?* In White, R. (Ed.).(2009). *Environmental Crime: A Reader*.

²⁴¹ Corporate crime. (2010). In *Encyclopædia Britannica*. Retrieved March 13, 2010, from Encyclopædia Britannica <http://www.britannica.com/EBchecked/topic/1363357/corporate-crime>

²⁴² All Bussiness A D&B Company. *The Definition of a Corporation*. Retrieved March 13, 2010 from <http://www.allbusiness.com/legal/contracts-agreements-incorporation/529-1.html>

²⁴³ Simon, D.R. (2000). *Corporate Environmental Crimes and Social Inequality: New Directions for Environmental Justice Research*. In White, R. (Ed.).(2009). *Environmental Crime: A Reader*. (p.p 103-116). UK, Willan Publishing. p. 103.

²⁴⁴ Herbig, F.J.W and Joubert, S.J. (2006). *Criminological Semantics: Conservation Criminology – Vision or Vagary?* In White, R. (Ed.).(2009). *Environmental Crime: A Reader*.

	Republic of Lithuania, in 2006-2007 there is a tendency of increase in organised environmental crimes and herewith the levels of environmental damage. ²⁴⁵
Invisible crimes	Environmental crimes also fall under the category of invisible crimes due the fact that much if not most, environmental crimes are committed clandestinely, with the result that there is a little civic knowledge and awareness of the crime phenomenon itself. ²⁴⁶
Economic crimes	There is no widely accepted definition of economic crime, and it is impossible to enumerate briefly the various definitions, theories, and offenses included in this category. The first tradition refers to economic crimes as illegal acts in which offenders' principal motivation appears to be economic gain. ²⁴⁷ Environmental crimes are aiming for material rewards instead of psychological ones ²⁴⁸ , therefore, it could be concluded that they largely fall under the category of economic crimes. The environmental crimes generating the most substantial revenues each year is considered to be illegal trafficking in endangered species (around 6-10 billion USD annually ²⁴⁹) and illegal trade in waste (around 10 billion USD annually ²⁵⁰). ²⁵¹ Illegal trade in wildlife is considered to be second only to drugs in its size. ²⁵²

²⁴⁵ Prosecution Service of the Republic of Lithuania. *The official conclusions on the environmental criminal acts pre-trial investigation status in Lithuania*. June 1, 2007.

²⁴⁶ Herbig, F.J.W and Joubert, S.J. (2006). *Criminological Semantics: Conservation Criminology – Vision or Vagary?* In White, R. (Ed.).(2009). *Environmental Crime: A Reader*.

²⁴⁷ Mccarthy, B. and Cohen, L.E. *Economic Crime: Theory - Classical Approach To Crime, Neoclassical Or Economic Approach, Advantages Of The Neoclassical Approach, Problems With The Neoclassical Approach*. Retrieved March 12, 2010 from <http://law.jrank.org/pages/1055/Economic-Crime-Theory.html>

²⁴⁸ Walsh, A. and Ellis, L. (2007). *Criminology: an Interdisciplinary Approach*. p. 70.

²⁴⁹ The International Crime Threat Assessment as cited in Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p.199.

²⁵⁰ The International Crime Threat Assessment as cited in Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p.203.

²⁵¹ Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p.199.

²⁵² Sansonetti, T.; Hans-Jörg Albrecht as quoted in Comte, F. (2006). *Environmental Crime and the Police in Europe: A Panorama and Possible Paths for Future Action*. p.199.