



Protecting the Environment with Criminal Law

– The Case of Iceland

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Abstract

As concern about the environment has risen during the last few years, international organisations and conventions have encouraged nations to use punishment for environmental offences as one means to fight for a better environment. Icelandic law contains various types of penal provisions in statute laws designed to protect the environment. However, no comprehensive legislation on matters of environmental impact or provisions on punishment have been enacted. Instead, various existing laws were revised and modernised so as to incorporate environmental protection - often to fulfil international requirements. The Penal Code from 1940 contains provisions which were not enacted in reference to offences against the environment, but might nonetheless be applicable in this regard. In 1999 a new provision on serious offences against the environment was enacted in the Penal Code. Many of these aforementioned statute laws on environmental matters include provisions on punishment, i.e., the Act on Nature Conservation; the Act on the Protection, Conservation and Hunting of Wild Birds and Wild Mammals; the Act on Hygiene and Pollution Prevention; and the Act on the Protection against Marine and Beach Pollution. In this paper, these acts and the surprisingly few judgements where they have been at issue are described, as are cases that have been reported and discussed in the media but not been brought before the courts. Finally, there are some reflections on general prevention and why the provisions on environmental offences are rarely applied.

Keywords

Environmental criminal law, nature conservation, pollution, punishment

1. Punishment to promote a better environment

In the last few decades, the state of the environment has been an important topic of discussion. It is unavoidable for human existence and ways of living



to cause change and damage to nature and the environment. Much of this damage is the result of lawful activities. However, there are limits to the misuse of the environment and the demand for sustainable development put forward in the 1980s can be traced to that fact (Our Common Future, 1987). Regulations on the protection of the environment have therefore been enacted, and offences are subject to penalties in domestic law. Additionally, requirements for using punishment have come up internationally.

Historically, the idea of protecting the environment itself with criminal law is relatively new. From the 1970s, an extensive destruction of ecosystems and continual pollution led many states to consider civil sanctions and administrative penalties insufficient to protect nature. Therefore, many states decided to implement criminal provisions to protect the environment (Heine, 1989, p. 255). At first, punishing for violations against the environment was generally seen as an exception, as other, more lenient legal remedies were usually considered to be more suitable. This stance is also reflected in the fact that even though nations have implemented criminal provisions regarding environmental affairs, these provisions are very rarely enforced.¹ With growing environmental threats, the stance that punishment is the exception has changed. In this current century, the view that it is necessary to have realistic and active criminal provisions to protect the environment has become prevalent, and more emphasis has been put on having clear provisions in the legislation, which should be used in praxis (Träskman, 2010, p. 15). Criminal liability should therefore no longer be a rare exception.

This view that punishment is becoming increasingly important can be seen when looking at the international context. The Council of Europe's Convention on the Protection of the Environment through Criminal Law, ETS No 172 04/11/1998, is an example. The convention obliges the member states to have provisions in their criminal law on offences against nature when lasting damage or the likelihood of such damage is caused intentionally or through negligence. According to the Convention, the criminal penalties must include imprisonment and pecuniary sanctions. However, the Convention has not been widely accepted, and it has been ratified by very few states. It has proved difficult to agree on collective rules about punishment. One of the reasons may be different cultures and customs, and when it comes to punishments, the Nordic nations are generally more lenient than others (Baumbach and Elholm, 2022, p. 583). Another example of a European interest is Directive 2008/99/EC on the Protection of the Environment through Criminal Law, which obliges the Member States to provide for criminal penalties in their national legislation when it comes to serious infringements of provisions on the protection of the environment. In Art. 5, Penalties, it says: »Member States shall take the necessary measures to ensure that the offences referred to in Art. 3 and 4

1. See, e.g., the Nordic research on environmental offences supported by the Nordic Research Council for Criminology in 2012-2013, *Nordisk Tidsskrift for Kriminalvidenskab* (2013), 100, no. 2.



are punishable by effective, proportionate and dissuasive criminal penalties.« Fulfilling the Directive's goals has not gone well and therefore the European Commission adopted a proposal for a new directive in December 2021. The proposal introduces new criminal offences, tougher sanctions, and better enforcement (Clarke et al, 2022).

2. Information on offences against the environment and the focus of this article

Despite the growing interest in environmental affairs, it seems that offences against the environment are not a topic of high concern in Icelandic society. That deduction can be made from three factors. First, very little research has been done on the proceedings of offences against the environment in the Icelandic criminal justice system. The only known research revealed that of the 42 cases the police investigated from 1995 until mid-2000, 31 were waived, only one led to charges but no punishment, and the rest was set aside because of lack of data (Guðleifsson, 2002, p. 63).² Secondly, statistics put forth by legal institutions include scarce information on environmental offences. They are not included among the offences against the special acts of law in the National Commissioner of Police's criminal statistics. Two types of offences against the special acts of law are specifically mentioned in these statistics, i.e., violations of traffic law and the law on narcotics offences, as those are the most common offences against the special acts of law (Afbrotatölfræði, 2019). There is therefore no way of knowing how many offences against the environment are reported to the police. One can assume that those types of offences are reported to the Environmental Agency of Iceland, but no accessible statistics exist thereon. The Prosecution Authority's yearly report from 2020 includes information about the number of offences that the public prosecutor's office dealt with that year. There it says that there were seven offences against hunting laws and that charges were brought up concerning two of them but waived in the other five. There is no information about offences against other special acts of law (Ársskýrsla Ríkissaksóknara, 2020, p. 7). This lack of distinction from other offences against the special acts of law indicates that charges are brought up in few cases. Third, very few judgements exist on offences against the laws on environmental protection. Research from 2013 revealed that from 1984 until 2012, there were only 14 judgements from the Supreme Court of Iceland concerning offences against the environment. Of these 14 judgements, 10 were on offences against the Act on the Protection, Conservation and

2. In 2000 Sigurður Örn Guðleifsson, lawyer, researched the police's handling of pollution cases from 1995 until mid-2000, see his master's thesis in environmental studies at the University of Iceland: Mengunarbrot (Pollution Offences), (2002). It is unknown if any similar research has been done since.



Hunting of Wild Birds and Mammals, and one on pollution. There were a few judgements from the District Courts, most of them on off-road driving, and only two on pollution (Bragadóttir, 2013, p. 269). In the past 10 years there have been no judgements from the Supreme Court on offences against the environment.

The Environmental Agency of Iceland oversees nature conservation, the protection of wild animals and their population, and pollution prevention. It grants permits for activities which could cause pollution, keeps such activities under surveillance, and can apply various sanctions to ensure that the law is being followed, for example administrative fines, according to Act no. 7/1998 on Hygiene and Pollution Prevention. The Environmental Agency has the authority to report offences against the law to the police according to Art. 70(1) of the law. If the alleged offence against the act and administrative regulations is both subject to non-criminal fines as well as punishment, the Environmental Agency evaluates if the offence should be reported to the police or concluded with an administrative fine from the Agency. If the offence is serious, then The Environmental Agency is obliged to report it to the police. An offence is considered to be serious if it is committed in an especially reprehensible way or under conditions which add to the offence's culpability, cf. Art. 70(2). Only one case of pollution is known to have been reported to the police in recent years, i.e., a shipping company's handling of waste which will be discussed in chapter 3.2.3. As it is an economic crime, the District Prosecutor both investigates the case and prosecutes it, if he deems the proof sufficient.

As in any other country, offences against the environment are committed in Iceland. This is evidenced by mistreatment all around the country, and both individual conduct and that of legal entities has been reported in media, especially by investigative journalists, which indicates that laws are being broken. However, little information exists on how these cases are handled in the criminal justice system and whether cases even come up in the system, and if so, how many. In order to analyse how these offences are dealt with, the existing data are explored, i.e., the legislation and the few judgements that have passed. A few cases which have been reported in the media and on investigative news programs are also discussed.

3. Criminal provisions in Icelandic law protecting the environment

For a long time, Iceland's environmental legislation focused on utilizing the environment rather than protecting it. This then changed, first when it came to protecting nature and later also when it came to protection against pollution. In the present legislation, it is clearly stated that nature itself is protected per se. In recent years, international cooperation has influenced the legislation and various changes have been made to fulfil the obligations thereof. Examples of



this include international conventions at the behest of the Council of Europe and United Nations, and the European Union's directives included in the EEA Agreement.³

In Iceland, no comprehensive legislation on matters of environmental impact or chapters in the Penal Code have been enacted, with provisions on offences and their sanctions, which in contrast has been done in the other Nordic countries. The first laws on this subject enacted in the Nordic countries were in Sweden: Miljöskyddslagen 1969; Denmark: Miljøbeskyttelsesloven 1973; Norway: Forurensningsloven 1981; Finland: Chapter 48 – Environmental offences, amendment from 1995, in the Criminal Code of Finland. Instead, in Iceland various acts which concerned the protection of the environment were revised and modernised, for example, the Act on Nature Conservation and the Act on Hygiene and Health Surveillance, to which provisions on protection against pollution were added. Special acts of law were enacted on other subjects, such as the Act on the Protection against Marine and Beach Pollution.

Iceland has criminal provisions in its Penal Code (PC), Act no. 19/1940, as well as in other acts of law on various issues, called »special acts of law«. Several special acts of law exist on the protection of the environment, as mentioned above. Some of them have been in force for a long time, while others have been changed in the last few years, often to fulfil international requirements. Most provisions on punishments for offences against the environment are in these special acts of law on different environmental affairs. The provisions on punishments are only a minor part of these acts, which mainly include provisions on the protection, structure, and governing of nature and wildlife, as well as preventing pollution. In most acts on environmental protection there are provisions on punishment for both individuals and legal entities, e.g., institutions and companies.

3.1. The Penal Code's provisions protecting the environment

3.1.1. The original provisions

When the Penal Code was enacted in 1940, environmental protection was not a very pressing issue, at least not in the same way it is today. However, the Penal Code does contain provisions which, although not specifically enacted with offences against the environment in mind, might nevertheless be applied to such offences. These provisions have been unchanged in the Penal Code since 1940 and have rarely been used by the Prosecution Authority or courts of law. According to Art. 165(1), it is punishable by 30 days and up to 16 years in prison to cause damage to another person's life, body, or property by intentionally causing an explosion, spreading toxic gases, or causing floods. If the offence is committed with negligence, then it is subject to fines or up

3. The European Economic Area Agreement enables the EFTA States (Iceland, Liechtenstein, and Norway) to participate fully in the Single Market.



to 3 years in prison, according to Art. 167. Only one judgement exists on the spreading of toxic gases according to Art. 165(1).

District Court of East Iceland 28. June 2007 (S-48/2007). S, a stationmaster at an oil company, mistakenly put 1,000 litres of acetic acid into a tank instead of a chlorine solution which was supposed to be used for a swimming pool in the neighbouring village, and gave the tank to E, a 17-year-old summer worker at the oil company, instructing him to bring the tank to the village and pump its contents into the swimming pool's chlorine tank. E followed S's instructions, but when he started pumping, toxic chlorine gas formed, spread out in the environment, and caused damage to the health of 45 people. S was deemed to have displayed negligence by not reading the markings on the tank before he gave the instructions to E, as he had considerable professional experience and knew that the materials needed to be handled with extreme care. S's offence was judged according to Art. 165(1), cf. Art. 167 PC, as he caused the spreading of toxic gases due to negligence, and the punishment was a suspended sentence of 30 days in prison. E was acquitted, as he was not thought to have had any particular reason to doubt that the tank contained chlorine.

According to Art. 169 PC, it is a punishable omission to not warn or prevent an explosion, the spreading of toxic gases, and causing floods, and the offence is subject to fines or prison for up to a year. Should someone intentionally put another person's life or health in danger by adding injurious substances to water-reservoirs, that conduct is subject to up to 12 years in prison according to Art. 170(1). This provision only applies to man-made tanks containing drinking water or wells, which are covered or otherwise distinguishable. Polluting groundwater is therefore not punishable according to this provision, but falls under the provisions in the special acts of law (Bragadóttir, 1997, p. 232). The original provisions of the Penal Code are concerned with protecting the life and health of people and property, not the environment itself, even though the environment can of course suffer from pollution or sustain other kinds of damage.

3.1.2. *The Penal Code's provision on severe offences against the environment*

In 1999 a provision on severe offences against the environment was added to the Penal Code, see Art. 179, and it was modelled on similar provisions that had recently been enacted in the Danish and Norwegian penal codes.⁴ This is an open provision on punishments for intentional offences against the environment, that is, conduct which is already described as punishable in the special acts of law. Should this conduct be serious to the point that Art. 179 is applicable, then it is subject to much more severe punishment than it would be according to the special acts of law, that is, up to 4 years in prison. The provision (Art. 179 PC as inserted with Act no. 122/1999) reads:

4. Art. 196 of the Danish Penal Code and former Art. 152(b), now Art. 240 and 242 of the Norwegian Penal Code.



»Imprisonment of up to 4 years shall be imposed on any person convicted of serious offences against legal provisions on the protection of the environment through the following actions:

1. Polluting the air, ground, ocean, or waterways in such a manner as to cause substantial damage to the environment, or an imminent danger of such damage.
2. Storing or releasing waste matter or hazardous substances in such a manner as to cause substantial damage to the environment, or an imminent danger of such damage.
3. Causing substantial disturbance of the ground with the result that the appearance of the land is permanently altered, or important natural formations are damaged.«

The purpose of this provision in the Penal Code was to increase the preventive effect of provisions on protecting the environment by making the most serious offences against the environment punishable according to the Penal Code (Þingskjal 457, 1999-2000, p. 2). Twenty years passed without this provision being brought before the courts. It was not until the summer of 2020 that the first and only judgement until now was passed where Art. 179 of the PC was implemented. The main violation was a severe drug production of six accused, but violations against the environment were connected to the drug violation.

District Court of Reykjavík 8. July 2020 (S-3221/2020). Three of the accused were accused of violating Art. 179(2) of the PC by pouring out waste generated from drug production around a summer house and into a septic tank, in addition to the drug production offence. This caused a significant chemical smell, and flakes of aluminium and chemical residue were accumulated in the soil. This was considered to potentially cause substantial damage to the environment, as well as to endanger children at play. Soil was removed to minimize the damage. The accused were found guilty in the District Court but acquitted in the Court of Appeal because of lack of evidence, see L 26. February 2021 (493/2020).

3.2. Provisions on punishment in special acts on environmental affairs

Many special acts of law on environmental affairs include provisions on punishment for offences against the law. Some of these acts have been revised in recent years, often to fulfil international requirements. The special acts of law are a framework and include fundamental rules which the administration is supposed to detail with further regulations. These special acts of law can generally be divided in two. On the one hand there are laws on nature and wildlife. On the other, laws regarding protection against pollution.

3.2.1. Nature Conservation

In 2013, a new act on nature conservation was implemented, Act no. 60/2013. It is modelled after a new approach to environmental protection, the ecosystem



approach, which aims to promote fairness in protection and sustainable usage (Þingskjal 140, 2015-2016). The structure of the criminal provisions changed with this act, and they are now more modern than in the older act, and more similar to provisions in the other Nordic countries. There are two types of criminal provisions. First, it is an offence to perform or carry out without permission anything that the act or administrative regulations based on the act requires permission or exemption for, Art. 90(1), a.

Secondly, it is an offence to violate specific provisions listed in the act, Art. 90(1), b. These are: 1) unauthorized usage of fire out in the open, Art. 28(1); 2) off-road driving, Art. 31; 3) damaging protected natural features, Art. 38(4); 4) to remove or dislodge fossils from where they have been found, Art. 60(2); 5) engravings on natural formations, Art. 71; and 6) advertisements alongside roads in the countryside, Art. 72. The punishment for violating these provisions is a fine or prison for up to 2 years, Art. 90(1). Other conduct which violates the provisions in the Act is not punishable (Bragadóttir, 2021, pp. 368-369).

By far, the most common offence against the Nature Conservation Act is off-road driving. It is forbidden to drive automotive vehicles off roads except on glaciers and snow-covered ground, if it is clear that there is no danger of damaging nature, Art. 31(1). There are many exemptions to this ban because of various work, for example, for agriculture, soil reclamation, utility installation, medical transport, police work, and rescue missions. The Environmental Agency of Iceland can also permit off-road driving if it is deemed necessary. One example is the permission to drive off-road because of movie productions, as in recent years it has become popular to film movies in Iceland. There are unfortunately many signs of off-road driving in Icelandic nature, especially in the highlands and other unfrequented places. Sometimes it can be difficult to know if something is a road or not. It can also be difficult to find those responsible for off-road driving and if they are found, the offences are usually dealt with by fining them. However, a few judgements do exist on off-road driving. There is, for example, a Supreme Court judgement from 2007 where it was debated whether the accused had been using a road or not.

H 22. March 2007 (331/2006). X was accused of off-road driving on a vast sand area in Southeast Iceland, partly covered with shallow water, and for damaging the wetlands there. He was on the sands looking for the Dutch East-India Company ship *Het Waapen van Amsterdam* which stranded in 1667 with a lot of gold on board and is thought to have sunk in the sand. The area X drove on was vegetated in some places and the soil was soft and wet, and in those areas it was possible to see road tracks. In other places no tracks could be seen, as water flows easily over the sands through ever-changing courses and their surface is constantly changing. The District Court concluded that the route X took was not a road and X was therefore found guilty. The Supreme Court came to a different conclusion. The court said that the route had been known for quite some time and formerly used for seal-hunting and collecting



driftwood. X and his colleagues had used the road for decades to look for the Dutch shipwreck and even had some help from the National Energy Authority. Additionally, the road was marked on a map made by the Cartography Institute of the United States Department of Defence and The Geographic Institute of Iceland in 1988. The Supreme Court therefore concluded that the tracks were indeed a road. It did not matter if parts of the road were sometimes under water, as the road was passable on some specific vehicles. X was therefore acquitted.

Around mid-summer of 2019 the Environmental Agency of Iceland had brought up 14 charges because of off-road driving (RÚV, 2019). An example of off-road driving in connection with a movie production can be found in a news article, reported by RÚV on the 27th of July 2021. It is a good example of how these types of matters are often resolved.

An Icelandic car racing club held a beach race at an historical site in South Iceland, as a part of a film project for the British TV show Top Gear on BBC. The organizers of the race did not apply for a permit for off-road driving, which only the Environmental Agency of Iceland can grant. The race was reported to the Environmental Agency, which monitored the situation, and the police and rangers were also notified. The individuals responsible for the race were interviewed and they said they possessed all implements necessary to restore everything to its original state after the race. The Environmental Agency believed it to be futile to stop the race, as the damage had already been done (RÚV, 2021). It is unknown if any charges have been brought up because of this conduct.

There are a few examples of offences against provisions on inscriptions on natural formations. Those responsible have usually not been found. One example is described in a news article from the 3rd of May 2013 on protected natural formations in Northeast Iceland, in the crater of Mount Hverfjall and in Grjótagjá ravine. At the bottom of the crater, the word »crater« was written in letters that measured 17 m tall and it was estimated that around 60-70 litres of paint must have been needed to complete the writing. In Grjótagjá ravine, the word »cave« was written on the wall (Morgunblaðið, 2013). There is one example of a court judgement in a case similar to this.

District Court of South Iceland, 5th of July 2016 (S-418/2015). An artist poured five litres of red food colouring into a hot spring in the Geysir geothermal area, so that the natural formations around the spring and its water column turned pink. The artist was accused of violating the provision of the older Act on Nature Conservation which detailed punishment for defacing natural terrain under special protection. The Court did not deem the provision detailed enough to fulfil the requirements on clarity of provisions on criminal liability, and the accused was therefore acquitted.



3.2.2. Protection of wildlife

Act no. 64/1994 on the Protection, Conservation and Hunting of Wild Birds and Wild Mammals covers the protection of wildlife and is the oldest and most old-fashioned of the statute laws protecting the environment discussed here. The act covers all wild birds and wild mammals, except for seals and whales on which there are special acts. The main rule is that wild mammals and birds are protected by the law (Bragadóttir, 2003, pp. 155-156). There are, however, exceptions to this, and further regulations on specific species, such as reindeer and birds, are detailed in different administrative regulations, for example on hunting, hunting methods, and terms. According to the law, owners of private property also own the right to hunt on their property. However, this does not apply to reindeer, which can only be hunted with a special permit from a minister, if the Environmental Agency believes that the reindeer population can withstand hunting and that hunting is preferable. Each year, hunting permits are issued for a specific number of reindeer during a specific period of time from late summer until autumn, in specific areas (Hreindýrakvóti ársins 2022). Act no. 64/1994 describes various behaviour towards wild birds and wild mammals which is not allowed and there is a provision at the end of the act, which says that offences are subject to fines or prison for up to 2 years. A few judgements exist on violations against this act. Mostly the offences have to do with the hunting of reindeer and shooting of ptarmigans with illegal firearms or on private property.

H 23. May 2001 (127/2001). F shot two reindeer while unaccompanied by a hunting supervisor and without a hunting permit. The Supreme Court stated that the cost of a hunting permit for the area in question was 90,000 ISK. F was therefore given a 200,000 ISK fine and a replacement penalty of 30 days in prison.

If the accused is found guilty the punishment is usually a rather low fine. In many cases, the accused is acquitted, e.g., because it has not been proven beyond reasonable doubt that the accused had been shooting ptarmigans on private property.

H 6. May 1999 (41/1999). S and E were accused of hunting ptarmigans on a 500 m high mountain in Northeast Iceland without the permission of the owner of the property. The District Court looked into ancient sources on the land's ownership and deemed that it was fully subject to proprietary rights. The accused were therefore found guilty. However, the Supreme Court did not find any records on the land ever having been properly settled or how it could have been subject to proprietary rights to begin with, as it was mostly used by the whole community for grazing sheep during summertime. Both accused were acquitted, as it was deemed too unclear if the land could be considered private property and therefore subject to the law on proprietary rights.

Several bird species are under the full protection of the law, i.e., the white-tailed eagle, the falcon, the merlin, the snowy owl, and the short-eared owl.



There are no exemptions permitted for the hunting of these birds and hunting them is therefore always a punishable offence. In a Supreme Court judgement from the 1990s the sentencing for an offence against fully protected birds was rather severe.

H 1993:1049. V and H had taken two baby falcons and two baby merlins, all of whom were unable to fly, from their nests and transported the baby falcons to Denmark, with the intention to sell them. They committed their offences against Iceland's fragile nature in order to gain substantial profit and had travelled to Iceland from Denmark with these intentions specifically. They also seemed to have treated the birds quite badly. These were aggravating circumstances. V and H were sentenced to 3 months in prison, but as H had a clean record, 2 months of his sentence were suspended. Additionally, both men were given a 200,000 ISK fine, and a replacement penalty of 40 days in prison.

3.2.3. *Land and air pollution*

No general act on protection against pollution exists in Iceland. The provisions on the pollution of land and air are part of an act whose origin is quite old and was originally only about health matters, i.e., Act no. 50/1981 on Hygiene and Health Surveillance. This act was later changed and the provisions on pollution were added to it. The present act is Act no. 7/1998 on Hygiene and Pollution Prevention. This act is a framework and does not include any provisions on what type of pollution is punishable. It allows for the minister in question to enact provisions on these subjects in administrative regulations, for example, on the pollution of water, air, and land, as well as on noise pollution. It also allows for granting permits for various activities which could cause pollution, such as the energy industry, metallurgy, the geochemical industry, the chemical industry, and the handling of waste. There are provisions included in the act which say that violations are subject to fines, and even prison for up to 4 years if the violations are severe or if they are repeated and include intent. This act has been changed and new provisions added to it many times over the last few years, often to fulfil international requirements, for example in accordance with regulations set by the European Union. Examples of changes include, but are not limited to, regulations on air quality, the emission of greenhouse gases, and plastic waste.

There are no judgements from appellate courts on offences against this act and there exist only two District Court judgements on land pollution. In one of those cases, the accused was acquitted, but in the other case two men and the municipal council were found guilty. Here, a legal entity was convicted, and most acts on environmental protection include provisions on criminal liability for legal entities.

District Court of Reykjanes, the 18th of May 1999 (S-0664/1999). G, the manager of a company which had acquired the necessary permits to operate a facility for collecting and sorting production waste, was accused of having



568 cubic metres of timber and 1,084 cubic metres of other waste, which turned out to be soil, buried in a landfill. It was proven that G had received permission to use the soil for a landfill within a seawall by the facility and his conduct was therefore not against the law. Additionally, the timber was not deemed to have caused any damage or defects to the environment, as it is not pollutant hazardous waste. G was therefore acquitted.

District Court of the Westfjords, 18th of July 2003 (S-49/2003). H moved the remains of houses and 1,000 cubic metres of iron waste to a farm in the Westfjords and buried them there in a landfill by the sea, despite not having any permits for such activities. J, the town mayor, gave the job to H on behalf of the municipal council in exchange for payment, even though he knew H did not have the permits necessary for such work. H and J were found guilty, H was fined 200,000 ISK and his replacement penalty was 30 days in prison. J was fined 400,000 ISK and his replacement penalty was 45 days in prison. The municipal council was fined 800,000 ISK (Bragadóttir, 2013, pp. 266-267).

Despite this shortage of judgements, there have been incidents of pollution which have been reported in mass media but do not seem to have resulted in punishment for those responsible. An example of this is the air pollution from a silicon plant in Southwest Iceland, which caused damage to the health of the people living in the surrounding area, and whose operations were halted by the Environmental Agency of Iceland in 2017. At the time, the plant had only operated for 10 months, and operations had gone badly from the very beginning (Kjarninn, 2022). Another example is an oil leak which occurred in December 2019 in an underground fuel tank at a gas station in a small village in North Iceland. It is estimated that approximately 6,000 litres of petrol leaked from the tank (Verkís, 2022). The soil was polluted and cavities in the ground were polluted with oil. Cleaning has not been satisfactory, and some nearby houses are still uninhabitable. Deep cleaning with special equipment has now begun, but this could take 2-3 years (RÚV, January 2022). There are no signs of a criminal charge in these cases.

In addition to Act no. 7/1998, several laws are concerned with specific types of pollution. There is, for example, Act no. 61/2013 on Chemicals and Act no. 55/2003 on the Handling of Waste. There exists a District Court judgement where a man was accused of dumping sludge from a small village in West Iceland into a hole in a lava field. This had been done for many years with the knowledge of the municipal council, which in this case had asked the accused to commit the act. He was found guilty, without the court deciding what suspended sentence was to be imposed on him, District Court of West Iceland, 2nd of July 2007 (S-67/2007) (Bragadóttir, 2013, p. 267).

The District Prosecutor is now investigating a case which has to do with the handling of waste, which the Environmental Agency of Iceland brought to him after it had been extensively discussed in a news programme (RÚV, Kveikur, 2020). The programme detailed how an Icelandic shipping company had sold two ships in 2019 which were then sent to be destroyed in India,



where pollution control and working conditions are completely inadequate and even life-threatening. As of summer 2022, the shipping company's director of operations has been designated the position of the accused in the investigation (RÚV, June 2022).

Finally, there is an offence against Act no. 55/2003 on the Handling of Waste, which has not led to punishment or an administrative fine. During the summer of 2020 T, a waste disposal and recycling company, spread 1,500 cubic metres of organic compost in a protected area with the aim to revegetate the land. However, the compost was polluted with plastic, including, but not limited to, a few kilogrammes of plastic cutlery. The Public Health Authority met with T's representatives who said that this had happened because of ignorance and that they would clean the area. Now, two years later, there is still a considerable amount of plastic in the area, and it has eroded and become microplastics which can never be completely cleaned up. An employee of the municipality's Health Authority told the investigative journalist that the provision on administrative fines, detailed in Act no. 55/2003 on the Handling of Waste, was almost never used and there was no tradition for using such fines (Stundin, 2022).

3.2.4. *Preventing marine pollution*

Act no. 33/2004 on the Protection against Marine and Beach Pollution is the main act on marine protection. It is the most international of the acts on environmental protection and it is in large part modelled on international conventions on protection against marine pollution, for example because of oil and/or other dangerous substances. In recent years it has also been changed in order to comply with such conventions, for example Annexes I and II of Marpol 73/78 (International Convention for the Prevention of Pollution from Ships 1973 and Protocol 78). The act describes various unlawful activities, for example dumping different substances in the ocean. This is a very typical special act of law, which first details rules of conduct and then provides a provision on punishment in the end. Offences against the act are subject to fines, prison for up to 2 years, and up to 4 years in prison in the case of severe or repeated intended violations. The act contains permission for the minister in question to enact administrative regulations on the act's content.

When compared to Act no. 7/1998 on Hygiene and Pollution Prevention, which applies to land and air pollution, there is a clear difference between the two. In the act on marine pollution there are provisions on various conduct that is prohibited, and these provisions include descriptions of this conduct. However, in the Act on Hygiene and Pollution Prevention there are no descriptions of any conduct and the conduct that is considered punishable depends exclusively on administrative regulations. There have been two judgements on charges for offences against Act no. 33/2004. The first is a Supreme Court judgement from 1999 and the second is a District Court judgement from 2016.



H 11th of March 1999 (262/1998). Two men were found guilty of dragging an old and leaky ship out on a fjord where it sank. It was deemed clear that they had known that the ship would sink, and one of the accused, the ship's owner, had ignored the local authorities' instructions to remove the ship from the beach, where it had been located for years. Both men were found guilty and fined. The ship's owner was given a 2,500,000 ISK fine and a replacement penalty of 5 months in prison. The other accused was given a 500,000 ISK fine and a replacement penalty of 60 days in prison.

District Court of Northeast Iceland, 19th of January 2016 (S-71/2015). The main engineer of a fishing vessel was accused of dumping oil-polluted seawater out of the ship's engine room and into the ocean. He was acquitted, as no samples had been taken and there had been no police investigation. Additionally, it was not proven that the amount of oil had been more than the allowed maximum.

4. Why are the provisions on environmental offences rarely applied?

4.1. *General prevention*

As has been discussed, there are provisions in the law on punishment for various offences against the environment, as the environment is protected *per se*, regardless of the protection of property and people's life and health. However, judgements are few and cases which seem like offences against acts on protection against pollution and have been discussed in the media in recent years have not led to charges. This points to possible obstacles in the criminal justice system, which make it difficult to get cases through. In Icelandic law punishments are expected to have general and special prevention. This is, for example, detailed in the parliamentary report with the Penal Code, which says that punishments should have general and special preventive and moral-educational effects (Alþingistiðindi, 1939, p. 352). This is also stated in Art. 1 of Act no. 15/2016 on the Execution of Punishment, where it says that punishments shall be executed in such a way that their special and general preventive effects are active. This applies to both offences against the Penal Code and to the special acts of law, and, thereby, to offences against the environment.

General prevention is a complicated phenomenon but important when it comes to environmental offences. It is expected to generally prevent people from committing offences. The general preventive effects are different depending on which individuals and what offences they apply to (Andenæs, 2004, p. 88). These preventive effects are divided into positive general prevention, which focuses on whether the legislation has an effect on and builds up the public's morality, and negative general prevention, which focuses on punishments' deterrence effect (Baumbach og Elholm, 2022, p. 60). There are other



means than just the law that have a preventive effect, such as police surveillance and investigation, and consequently the probability of detection, how fast offences are acted against, the charges, the judgements, the execution of punishment, and media reports of the offences, and it can be difficult to evaluate each factor separately (Hurwitz, 1971, p. 60).

Icelandic law describes two different kinds of offences against the environment. On the one hand, offences against nature and wildlife. On the other, pollution of air, land, and sea. The former are usually committed by individuals, but the latter by legal entities. This can affect general prevention. Offences against nature, e.g., hunting ptarmigans on private property or off-road driving, are in most cases committed by individuals. In these cases, it is likely that negative general prevention is most effective. Offences that have to do with pollution can be committed by individuals, and that is the case in the few judgements that exist in Iceland. However, such offences are more commonly committed by legal entities, as can be seen in the cases reported in the media. Such offenders often have specific knowledge concerning their activities, they are not known repeat offenders, and they have a different position in society from the typical offender. Helena du Rées considers provisions on punishment for environmental offences, committed within legal entities, to be well suited to achieve general preventive effects. These effects are likely to be considerable, as the legal entities' operations are dependent on reputation and good-will (du Rées, 2001, p. 111). As these offences can cause great damage to the environment and people's health, it is possible that positive general prevention could have an effect and prevent offences in the long run.

However, academics disagree on whether the law and its enforcement have any effect on people's behaviour and whether the criminal justice system can shape the public's moral opinion that the law should not be broken. Johs. Andenæs is of the opinion that the law, its enforcement, and the criminal justice system can have these desired effects, but that there is a difference between punishment's deterrence effects and its effect on moral sensibility. The former, he says, begins immediately after a provision on punishment is enacted, but it can take some time for the provision to have a moral effect (Andenæs, 2004, pp. 84-85). Vagn Greve is of a different opinion, as he doubts that legislation can have any effect on shaping people's morality and instead says that it can only strengthen the moral sensibility which is already prevalent. It is therefore hardly realistic to think that punishments can in any way create moral sensibility (Greve, 1996, p. 44). It could be surmised that punishment can have a moral-educational effect, especially in cases which do not also build on moral codes. The contemporary environmental hazards are so overwhelming that it is likely that the penal system will have an increased positive general preventive effect.

Even though the criminal justice system is composed of many factors, and they must be examined as a whole, specific factors can also have different



effects on people's behaviour, which can influence the strength of the general prevention. Per Ole Träskman has analysed how environmental criminality matches with the different components of the penal system.⁵ He says that first of all, the criminal provisions must be clear and those individuals who the provisions concern must know the provisions. Secondly, the likelihood of being punished, should laws be broken, needs to be high. Thirdly, punishments should not be too lenient, as they must deter people from breaking the law (Träskman, 1992, p. 10).

4.2. *Clear provisions*

Many things have changed for the better when it comes to environmental protection in Iceland in recent years. Laws have been amended and new laws with clearer provisions on criminal liability have been enacted, such as the Act on Nature Conservation. However, it is still a problem that many criminal provisions are too fragmented and scattered in the legislation to have the necessary general preventive effects. This is especially apparent when it comes to provisions on the pollution of land and air. Administrative regulations complicate the legislation for protection against pollution and the granting of permits for polluting activities makes the rules on criminal liability even more complicated. Therefore, it is often unclear if certain conduct is lawful or not. Träskman believes that such uncertainty affects authorities' surveillance. The more uncertainty there is about whether an activity violates the laws and permits granted, the more difficult it is for authorities to prove that a criminal offence was committed (Träskman, 1992, p. 12). This may be one of the reasons why many cases never go further than to the Environmental Agency in Iceland and never reach the courts. Even though this link between the environmental criminal law and administrative law has these disadvantages it has been argued that this connection is almost unavoidable. One of the reasons is that the administrative authorities, as experts in the field, are perhaps better qualified than a judge in a criminal court to determine if a specific form of pollution should be considered an offence (Faure, 2017b, pp. 271-273). It could also be beneficial if conditions in permits were written with sufficient clarity so that they can form basis for criminal liability.

4.3. *Probability of detection and the likelihood of being punished*

Monitoring the environment is primarily in the hands of the administrative authorities, not the police as is the case when it comes to traditional criminality. Additionally, the administrative authorities' position towards environmental offences is much more lenient than the police's position is towards traditional offences. This is the case when it comes to pollution cases. If the administrative authorities can point out what has gone wrong and it is corrected, then they have no interest in charging companies.

5. See his book *Miljöbrott och kontroll av miljöbrottslighet* from 1992, on environmental criminal law in Finland.



Cooperation leads to more potential success than a criminal charge to the police (Träskman, 1992, pp. 13-14). Additionally, the police and the prosecution often lack specific knowledge and experience in this field. Therefore, it is likely that minor environmental offences are the ones that are the subject of the criminal justice system.

Furthermore, offences against nature are difficult to detect. Before the financial collapse in 2008, the police and the Coast Guard organised helicopter surveillance flights in South Iceland over the highlands and thus caught people driving off-road. After 2008 this surveillance came to a halt and has not been taken up again to the same extent. Therefore, it can be concluded that the likelihood of prosecution and punishment for environmental offences is so small that people can be rather sure that they will not be prosecuted and punished even if they violate the law.

4.4. *Severe punishments*

It is a matter of opinion how much general preventive effect more severe punishments have. If punishments have reached a certain limit, it has little effect to make them even more severe. The knowledge that an offence can be detected is usually more effective than knowledge of the severity of the punishment (Andenæs, 2004, p. 87). It has also been argued that fines are a better tool than imprisonment to deter environmental offences committed by legal entities, as society receives fines as payment, but imprisonment imposes high costs on society (Situ and Emmons, 2000, p. 175). Additionally, more factors than general prevention need to be considered when the severity of punishments is decided. The guilt and the proportion between the offence and the punishment are more important than general prevention (Thormundsson, 1992, p. 76). Furthermore, there needs to be a correct balance between an offence's severity and the punishment's severity (Baumbach and Elholm, 2022, p. 65). However, this can fit well together, and provisions on offences and punishment can be made so that they have a general preventive effect, even though the general rule of guilt is being followed (Gröning et al., 2019, p. 51). Icelandic research from 2012 shows that the punishments for environmental offences are very lenient in those rare cases where they are imposed, usually low fines. If the punishment includes imprisonment, it is usually a suspended sentence (Bragadóttir, 2013, pp. 268-270). This praxis has not changed in the past 10 years and the number of cases has decreased, if anything.

4.5. *Proof*

Offences against the environment are victimless crimes, which makes them less likely to be reported to the authorities. If they are reported, they are often difficult to prove. According to Art. 108 in the Code of Criminal Procedure no. 88/2008, the burden of proving the guilt of the accused rests with the prosecutor. If the prosecutor considers that which has been revealed



to be insufficient or unlikely to lead to a conviction, he shall not proceed further, cf. Art. 145. One example of an offence against nature which is difficult to prove is off-road driving (Bragadóttir, 2013, p. 264). Such behaviour often takes place in remote places and usually there are no witnesses to the offence. It is difficult to find the offenders unless they are caught in the act, and therefore there are not many who report them. Such offences are generally reported by rangers in the highlands. Pollution is another example of an offence where it can be difficult to find those responsible, as many concurrent factors can be at play. Additionally, it is not enough to prove that the law, administrative regulations, and permits have been broken. The conduct must be committed intentionally for it to be an offence against the Penal Code, and with negligence for the conduct to be a breach of provisions in the special acts of law.

4.6. *Toolbox approach*

Directive 2008/99/EC on the Protection of the Environment through Criminal Law has been criticised for focusing too much on enforcement through criminal law and not mentioning administrative penalties at all (Faure, 2017a, pp. 143-144). This is not in compliance with the growing trend in some European countries to use other more lenient remedies, the so-called toolbox approach (Faure, 2017a, p. 142). Iceland has introduced that approach by provisions on different remedies in the law protecting the environment. Thus, The Environmental Agency can use various more lenient sanctions because of violations against the environment. Examples include, but are not limited to, warnings, the obligation to restore the environment, daily fines, to have the offender pay for necessary repairments, the halt of activities, and administrative fines. No statistic is available on the appliance of these sanctions. In smaller cases the police can conclude cases by using fines, e.g., fines for off-road driving. It is positive if simpler cases can be solved this way, for example with administrative fines, and that more complicated cases go to court and can thus cause general prevention (Forurensning og straff, 1991, p. 276). However, it remains the case that when it comes to violations against the environment in Iceland, punishments are rarely used, neither traditional penalties nor administrative ones. The case of the plastic pollution in the protected area referred to in chapter 3.2.3. is an example thereof.

5. Conclusion

When it comes to protecting the environment with criminal law Iceland is not doing as well as its neighbouring countries. To some extent though, the legislation has improved in recent years. Thus, the provisions on criminal liability and punishment in Act no. 60/2013 on Nature Conservation are modern and clear. Even though Act no. 64/1994 on the Protection, Conservation and



Hunting of Wild Birds and Wild Mammals is old-fashioned, the offences against the act are rather clearly described. Despite there being very few judgements, there are examples of the criminal provisions in these two acts being applied by the courts.

If protection against pollution is considered, the situation is even worse. The criminal provisions in Act no. 33/2004 on the Protection against Marine and Beach Pollution are clear enough, but hardly ever applied. In Act no. 7/1998 on Hygiene and Pollution Prevention, which applies to pollution of land and air, there are hardly any provisions on the criminal conduct, even though there are provisions on punishment. Criminal liability relies completely on often unclear administrative regulations enacted in accordance with the law, and it is questionable if those provisions live up to the requirements made to the clarity and accessibility of criminal provisions. Additionally, these provisions have scarcely been applied by courts and not at all in the past decade.

It can be argued that the situation in Iceland matches well to Träskman's analysis on environmental criminality and the criminal justice system in Finland in the nineties (Träskman, 1992, p.10). The criminal provisions are not clear enough and often unknown to those whom they concern, the likelihood of being punished is low, and the punishments are very lenient. It is not likely that such legislation and law enforcement can have general preventive effects. In order to improve the situation, the toolbox approach has been introduced in some acts in recent years, by enacting provisions on remedies such as warnings, the obligation to restore the environment, daily fines, the halt of activities, and administrative fines. However, this does not seem to have changed much and there is no information accessible on the application of these sanctions.

Criminological research is needed on the type and number of offences against the acts on protection of the environment. There is also a need for statistics on if and how these laws are enforced. There are few indications that they are being used, at least not to any significant degree or in serious cases. If offences against the environment are criminalized without a guarantee that they will be enforced there is a danger that the legislation is only symbolic (Faure, 2017a, p. 139). Additionally, it is essential that information on enforcement of the law is published, if there is any enforcement at all, in order to have general preventive effects.

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