



# Impressions on the Role of Environmental Criminal Law in Present Day Society

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**Tamás Molnár**

PhD student  
University of Public Service,  
Faculty of Law Enforcement  
[mtamas1992@gmail.com](mailto:mtamas1992@gmail.com)



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## Abstract

**Aim:** One of the defining features of modern society is the legitimate fear of the impacts of environmental damage. The consumerism and the resulting over-production are the root causes of environmental challenges that threaten our very existence. This study aims to investigate the role of criminal law in environmental protection.

**Methodology:** Empirical analyses were conducted on the contents of finalized criminal cases in Borsod-Abaúj-Zemplén county and Csongrád-Csanád county from the years 2009 to 2018.

**Findings:** The findings reveal that the primary role of environmental criminal law is to safeguard regulations related to environmental use. Analysis of Hungarian criminal cases involving environmental harm and damage to nature show that the majority of cases were not related to production or manufacturing practices.

**Value:** This study presents a theoretical model that categorizes actions causing environmental harm into four groups, irrespective of their legality. Drawing on empirical evidence from criminal and administrative procedures, the study suggests potential directions for future regulatory actions.

**Keywords:** environmental protection, environmental damage, green criminology, environmental criminal law

## Introduction

The society of 19th century, built and based on consumerism, has brought not only economic development and prosperity, but also more and more apparent

environmental harm. The effects of the rapid devastation of the ecosystem have drawn the attention of criminological thinking since the 1960s. This new trend that has crept into corporate crime was coined by Lynch 'green' criminology, referring to the constantly degrading natural environment (Goyes & South, 2017).

The United Nations Conference on the Human Environment which was held in Stockholm in June 1972 provided a platform for NGOs which emphasized the importance of environmentalism as well as marked a turning point in environmental politics. The emergence of the environmental crisis has been clearly displayed in the tendency, that by the 1980s environmental crimes – showing a particularly large variety – in most legal systems became criminal offences. In the decades that followed, countless research was done on the topic, which justify the reinvestigation of cases that belong to environmental crime and establishing them on criminological foundations, while paying particular attention to the ineffectiveness of the institutional reactions that have attempted to handle these cases. However, the great diversity of environmentally harmful offences makes it difficult to have a systematic approach in this. This is further substantiated by the large variety of criminal cases and the diverse criminological research. To begin with, I will outline the main trends in green criminological research, and then attempt to set up a theoretical model which can divide the rather heterogeneous group of environmentally harming offences (which include ones that are damaging to nature itself). This model is based on calibrating the degree of severity of the danger an offence poses onto society itself and through these hopes to provide a possible direction for future legislation. The fact that the European Commission evaluated the Environmental Crime Directive (Directive 2008/99/EC) in 2019 and 2020, then adopted a proposal for a new Directive on the protection of the environment through criminal law, to replace the 2008 Directive on 15 December 2021, gives actuality to the topic.

## **Areas of research in green criminology**

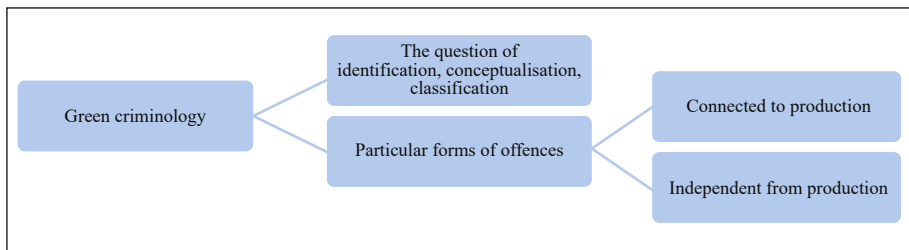
References in green criminology can be grouped into two major categories or branches. One branch is attempting to identify green criminology itself by classifying and categorising our criminological knowledge of environmental harm. It deals with such topics as the definition of environmental crime, their characteristics, typology, the methodology of environmental measures in legislation and problems that occur during criminalisation. The other significant branch concentrates mainly on the particular criminal offences that occur. These works

appear to be more puzzle-like and often reflect the diversity of regulations of specific nation states. Their topics focus on two main areas:

- a) Normative infractions connected to production processes;
- b) Criminal offences independent from production.

The theoretical background of offences connected to production is based on our risk society, the monitoring of deviances reflecting the criminological view of white-collar crime. The research of offences and behaviour that are independent from production examines mainly the illegal trade of endangered species. This latter research is more developed since international action to criminal offences against wildlife does not affect the economic interests of specific nation states. The infractions of environmental criminal offences in such situations mean the breaking of particular international agreements whether this concerns the participating parties or specific persons (from these particularly relevant the CITES /Convention on International Trade in Endangered Species of Wild Fauna and Flora/ – describing agreements on trade of these). Dealing with such problems – just like in case of migration – requires a holistic approach and wide international cooperation, therefore this research provides several ideas that are worth considering.

**Figure 1**  
*Areas of research in green criminology*



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Multitudes of researchers concentrate on a particular locale at a given time, and analyse dogmatically the environmental delictum which is in effect there or unfold the practices of law enforcement of the same. In order to ensure and increase the effectiveness of institutional reactions two theoretical models have been designed for the prevention and handling of deviant behaviour. The imperative model emphasises the authority of the state while the cooperative model sees cooperation as the solution (Niel & Aaron, 2005).

## Categorisation of environmental crime

László Pusztai puts environmental crime into the category of economic crime building on Merton's strain theory. As such, environmentally harmful offences are identified as normative infractions connected to production (Györi & Inzelt, 2016). Building on this thought I would like to take it one step further in the categorisation of environmental crimes with the predisposition that all human behaviour is guided by purpose or is directly connected to such behaviour. In my opinion an offence is connected to production if two criteria are present at the same time. One, that the act is done through or within a legal entity or company. The other, that these acts bring financial gain, whether directly or indirectly, to the offender. These two criteria create four groups within environmental criminal offences (shown in *Figure 2*).

**Figure 2**  
*Categorisation of environmentally harmful offences*

		PLACE OF OCCURENCE	
		ORGANISATIONAL	OTHER
MOTIVE	FINANCIAL	<b>I. GROUP:</b> Offences connected to production: a) industrial b) economic offences in agriculture and forestry	<b>II. GROUP:</b> Offences motivated by financial gain and committed on a personal level, or outside of legitimate business, e.g. in organised crime.
	OTHER	<b>III. GROUP:</b> 'Green-collar' crime: offences committed within a legitimate business, typically with the goal of saving time.	<b>IV. GROUP:</b> Offences committed on a personal level, mostly with the goal of satisfying a need, often connected to culture.

*Note.* Created by the author.

Offences belonging to the first group are the most serious since their effect on ecology is the greatest compared to the others. Within this group the two sub-groups should be noted:

- a) offences connected to industrial production;
- b) offences in agriculture and forestry.

## Characteristics of offences connected to industrial production

The criminalisation of behaviours connected to industrial production pose the greatest challenge in their descriptions. These, apart from the use of organisational framework, have particular attributes. The differences are described in the following table.

**Table 1**  
*The two subgroups of behaviours connected to production*

	<b>INDUSTRIAL</b>	<b>AGRICULTURAL</b>
<b>PART OF ENVIRONMENT DIRECTLY AFFECTED</b>	Water, air	Soil, biota
<b>THE RELATION BETWEEN BEHAVIOUR AND ENVIRONMENTAL HARM</b>	cumulative	direct
<b>CARACTERISTICS OF CONSEQUENCES</b>	mobile	localised
<b>TYPICAL HARMFUL BEHAVIOUR</b>	emission / overuse	logging / machinery working on the land
<b>OCCURENCE</b>	continuous	cyclical
<b>ORGANISATIONAL FORM</b>	complex	simple
<b>PERCEPTION OF CAUSED HARM</b>	underrepresented	Overrepresented
<b>SPREAD OF CONSEQUENCES IN SPACE</b>	global	Local, regional
<b>PLACE OF BEHAVIOUR</b>	Often cannot be exactly specified	Typically, easily specified
<b>RANGE OF PROHIBITED ACTIVITIES</b>	Relative, based on measurements	absolute, done by identifying the used objects/equipment
<b>TYPICAL LEGAL CONSEQUENCES</b>	administrative	criminal

*Note.* Created by the author.

In the present Penal Code (Act C of 2012 on the Penal Code, short: Btk.) the environmental harm section (Btk. 241. §) is meant to sanction legal offences which are connected to industrial production while the protection of habitat from environmental harm section (Btk. 243. §) is the basis of punishment for legal offences committed in agriculture and forestry. The protection of species section (Btk. 242. §) typically criminalises offences that are not committed within organisations. It's important to mention that the definition of environmental crimes differs in the criminological and legal context. In criminological

thinking the ecological impact whereas in criminal law the illegality of the offence is the basis of the definition. The chasm and even opposition between the two can be well illustrated by the case of the battery collector, who collected batteries from people with the goal of selling them to the legitimately working recycling company. From the ecological point of view this activity was very useful, since if even one of those batteries were just left out in nature – which admittedly happens way too often – would cause more damage than this ‘criminal’. Whose actions, unfortunately, in line with present laws, are a criminal offence. As a consequence, he was sentenced to suspended prison sentence, because he broke the law on waste management. (As in Kazincbarcika Regional Attorney Office B.51/2012. dossier) From an ecological point of view, throwing away even one PET bottle has more harmful impact on society than the above, but this, although it is against the law, is not a criminal offence. This example sheds clear light on the fact, that we mustn’t think of environmental harm only through the glasses of legal procedures.

## **Description of Hungarian institutional reactions in accordance with this classification**

I pored over the dossiers of criminal cases in the years 2009–2018 of Borsod-Abaúj-Zemplén county as well as Csongrád-Csanád county (this included 92 cases of environmental harm, 186 cases of damage to nature, of which 119 were in connection with protection of species, and 67 were connected to the protection of territory). I tried to put all the studied cases into one category of the table below in an effort to understand the nature of the offences that were the basis of the legal procedures. Unfortunately, the cases connected to industrial production are underrepresented in this list, even though those are the ones that cause today’s global concerns, as presently they belong under the administrative jurisdiction. Cases connected to agriculture came into the vision of the Criminal Investigation Department in larger numbers, however, it is obvious that these offences were predominantly less harmful to society and were committed outside of organisations and lack financial motives. From the 278 criminal cases 6 were unclear as to where exactly they fit into this classification, but the 272 other cases are classified as follows:

**Table 2***The studied cases classified according to the above cited classification*

		PLACE OF OCCURENCE	
		ORGANISATIONAL	OTHER
M O T I V E	FINANCIAL	<b>I. GROUP:</b> a) industrial offences connected to production: 16 b) economic offences in agriculture and forestry: 36	<b>II. GROUP:</b> 40
	OTHER	<b>III. GROUP:</b> 27	<b>IV. GROUP:</b> 153
<b>Not classified: 6</b>			

*Note.* Created by the author.

Looking at the criminal procedures conducted (in which the authorities used some type of punishment as a consequence of the offence) the same ratios can be seen: from the 70 cases 57 belong to group II. and IV. 4 of the offences were environmental harm (e.n.) cases, and 66 were harm to nature (h.n). The dominance of offences of harm against nature is obvious (58 cases).

**Table 3***Classification of the criminal procedures that were conducted*

		PLACE OF OCCURENCE	
		ORGANISATIONAL	OTHER
M O T I V E	FINANCIAL	<b>I. GROUP:</b> a) industrial offences connected to production: 5 b) economic offences in agriculture and forestry: 4 (2 e.n. and 2 h.n.)	<b>II. GROUP:</b> 28 e.h.
	OTHER	<b>III. GROUP:</b> 2	<b>IV. GROUP:</b> 29 e.h.
<b>Not classified: 2 (harm to nature)</b>			

*Note.* Created by the author.

It is clearly shown by this classification, that the offences connected to production, which are the most harmful to society, instead, they are outnumbered by the offences committed by individuals in ‘other circumstances’. This division – according to the interview conducted with the Borsod-Abaúj-Zemplén County Government Office Environmental and Nature Protection Department – changes

when we take a look at the authorities' administrative procedures. Offences that are fined by the administrative authorities are typically committed by businesses when they cannot meet the legal requirements of new, stricter measures by the defined deadlines. These offences are clearly foreseen by both the authorities and the leadership of the businesses. Therefore, when the measures are enforced, the offences that are less dangerous to society are punished heavily whereas offences connected to industrial production are simply fined. These fines are easily passed down to the consumers just like value added taxes. In an ideal scenario most offences that belong under the effect of Criminal law – considering the effects of normative infringements in industrial production – should belong to group I., while the administrative sanctions should be meted out onto the environmentally harmful offences of the other three groups. Instead of this, we see that Criminal law reacts the least to offences connected to the normative infringements of industrial production while these dominate the authorities' administrative procedures.

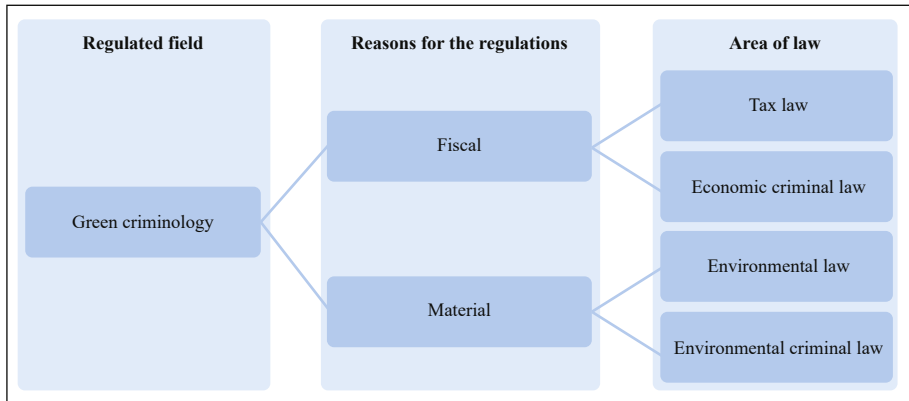
## **The role of Environmental Criminal law in society**

As shown by the aforementioned arguments, we can conclude that the offences which are most dangerous to the ecosystem and therefore society itself are offences connected to industrial production. However, these same offences are vastly underrepresented in criminal law procedures. In order to fully understand the role of criminal law in environmental protection we must first examine the legal measures connected to production as a value-generating process. In consumer society the government encourages production, even though when it follows the liberal economic model it withdraws from most economic spheres. The government does so, as the increase of production ensures the assets needed to finance the growing governmental responsibilities as well as helps in the continued improvement of the standard of living for the population (Halsey, 1997). Consequently, in legal systems the financial considerations and interests of the government prevailed in the beginning, resulting in the present administrative and tax laws. The enforcement of the legally regulated economy is in the interest of the entire society so it brought about economical criminal law which protects the economy indirectly and in a limited range, through the use of the legally regulated order (Győri & Inzelt, 2016). Environmental damage appeared in the wake of increased production resulting in the necessity of new regulations created from a material point of view, such as the normative use of the environment in administrative law.



**Figure 3**

*The regulations of production as is connected to criminal law*



*Note.* Created by the author.

In my view, the role of environmental criminal law is to defend the regulations on the use of the environment in an orderly manner, moreover, to enforce the pre-set limitations on the use of the environment. In environmental protection criminal law is an indirect tool which in fact does not regulate ecological issues, rather just monitors that norms described in criminal law are kept. This point of view is also supported by the fact that environmental criminal offences, similarly to economical criminal offences, are mostly framework regulations resulting in administrative contribution (Polt, 2016). It is not by chance that the criminological examination of environmentally harmful practices grew out of the examinations of economic criminal law (Wolf, 2011) since production brings about the greatest changes to the environment. Thus, based on the above facts it is evident that the legal measures on use of the environment taken from an ecological point of view should be within the role of the administrative authorities. Moreover, that it is in the interest of our entire society, that criminal law should receive greater authority to enforce these measures. Taking into consideration the extent of the caused damage – in a limited number – even practices that are done outside of production can be criminalized. When defining these, the ultima ratio of criminal law should be in the forefront and foremost considered, applying the gradual enforcement of legal consequences.

## **In conclusion**

The examined Hungarian criminal cases of environmental harm and harm against nature show that the vast majority of practices warranting the procedures were

not connected to production and as such were not committed within organisations, furthermore they were not motivated by financial gain. On the other hand, the sanctions of the administrative authorities – by the use of environmental protection and disaster prevention fines – reacts mostly to normative infringements that are in fact arise in connection with production. Although the process of production is in the financial interest of all governments, the consequent deterioration of the environment makes it necessary to reform the present consumerist practices. The most important step in this direction is to define the use of the environment based on ecological viewpoints as well as limiting the materialistic views of production. Since the norms of criminal law should reflect the diverse levels of moral disapproval of society as a whole, it would be desirable that the delictum in environmental criminal law would address and sanction normative infringements that are closely connected to production, as these pose the greatest challenges to our world. Some offences that do not harm the environment or do so to a lesser extent could be sanctioned by legal consequences that are outside of criminal law. The new proposal of the European Commission defines criminal offences in a more detailed way, adds to the list of offences, defines sanctions and seeks to enhance the efficiency of enforcement. However, the question from an ecological point of view is, that compared to the present rules, how radically the focal point of the regulation would change, and with all this, how would institutional reactions to environmental delinquency shift.

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### **Reference of the article according to APA regulation**

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