

## Selected aspects of legal nature conservation

The basic legal act governing the nature conservation resources is the Act on nature conservation of 16 April 2004 ([Journal of Laws, item 1614 as amended](#)). **Nature conservation**, pursuant to Article 2(1) of the above-mentioned Act, consists in preservation, sustainable use and restoration of resources, formations and components of nature:

- 1) wild plants, animals and fungi;
- 2) plants, animals and fungi covered by species protection;
- 3) migratory animals;
- 4) natural habitats;
- 5) habitats at risk of extinction, rare and protection species of plants, animals and fungi;
- 6) formations of animate and inanimate nature and fossil remains of plants and animals;
- 7) landscape;
- 8) greenery in urban and rural areas;
- 9) woodlots.

For the purposes of implementing the project entitled *You have right to effective protection of nature*, it has been adopted that the term **legal nature conservation** will be understood **as activities and cooperation of public institutions (law enforcement bodies, judicial bodies, public administration units) – based on their own competence and legislation – in the area of nature conservation.**

It is worth stressing that we should distinguish between the term of legal nature conservation and the term of legal protection of the environment which is more extensive in relation to nature conservation and means – pursuant to Article 3(13) of the Act of 27 April 2001 Environmental Protection Law ([Journal of Laws 2018, item 799, as amended](#)) – taking up or abandoning activities allowing to preserve or restore natural balance and consisting, in particular, in:

- a) rational shaping of the environment and management of environmental resources in line with the sustainability principle,
- b) preventing contamination,
- c) restoring natural features to their proper condition.

### Selected entities involved in legal nature conservation

The Constitution of the Republic of Poland of 2 April 1997 ([Journal of Laws of 1997, No 78, item 483, as amended](#)) – hereinafter referred to as the Constitution – does not contain the term of nature conservation, but since nature conservation is part of protection of the environment, we should assume that anytime the Constitution mentions protection of the environment, we should also understand this as nature conservation.



Pursuant to Article 5 of the Constitution, The Republic of Poland shall ensure the protection of the natural environment pursuant to the principles of sustainable development. Protection of the environment, pursuant to Article 74(2) of the Constitution, shall be the duty of public authorities which pursue the policy ensuring the ecological security of current and future generations (Article 74(1) of the Constitution) and shall support the activities of citizens to protect and improve the quality of the environment (Article 74(4) of the Constitution). The fulfilment of the above-mentioned provisions of the Constitution is Article 4(1) of the Act on nature conservation, pursuant to which the responsibility of public administration bodies, legal persons and other organisational units and natural persons is to take care of nature which is national heritage and wealth.

**1) The Minister of the Environment**, being a member of the Council of Ministers, shall participate in pursuing the internal and foreign policy of the Republic of Poland, not reserved for other state bodies and territorial self-government, in particular through:

- Ensuring the execution of acts, issuing regulations and ordinances,
- Coordination and control of work of public administration bodies,
- Initiation and development, with regard to the section he is in charge of, the policy of the Government and submitting, in this respect, initiatives and relevant draft normative acts during meetings of the Council of Ministers,
- Pursuing the policy determined by the Council of Ministers.

The detailed scope of activity of the Minister of the Environment, pursuant to Article 33(1)(1) of the Act on the Council of Ministers, has been laid down in the Regulation of the Prime Minister of 10 January 2018 on the detailed scope of activity of the Minister of the Environment ([Journal of Laws, item 96, as amended](#)). In accordance with the above-mentioned regulation, the Minister of the Environment is in charge of the government administration Environment section.

The Environment section covers the following matters: protection and shaping of the environment and the rational use of its resources, nature conservation, including in national and landscape parks, nature reserves, and conservation of plant and animal species, forests protected by law, animals and other formations of nature, geology, management of natural resources, control of compliance with environmental requirements and examination of the condition of environmental, forestry, forest and forest land protection, hunting, genetically modified organisms, with the exception of matters relating to issuing authorisations for marketing and pharmaceuticals and matters of genetically modified organisms intended for use in feed and genetically modified feedstuffs with regard to certain tasks or activities specified in the relevant regulations.

The General Director for Environmental Protection is subordinate to the Minister of the Environment. The Minister of the Environment supervises the President of the National Atomic Energy Agency and the Chief Inspector for Environmental Protection as well as the activities of the National Fund for Environmental Protection and Water Management and the State Forests National Forest Holding.

**2) General Director for Environmental Protection** is a central body subordinate to the Minister of the Environment (Article 121(1) and (2) of the Act of 3 October 2009 on the



provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessment ([Journal of Laws 2018 item 1722, as amended](#)) and the body with regard to nature conservation. The General Director for Environmental Protection shall implement his tasks with the help of the General Directorate for Environmental Protection which is a state-owned budgetary unit.

The most important competences of the General Director for Environmental Protection with regard to nature conservation include:

- 1) co-participation in pursuing the environmental protection policy in the field of nature conservation and control of the investment process;
- 2) control of responsibility for preventing environmental damage and remediation of environmental damage;
- 3) data collection and preparing information on the Natura 2000 network and other protected areas and on environmental impact assessments;
- 4) cooperation with the Chief Nature Conservator and the State Council for Nature Conservation in matters of nature conservation;
- 5) cooperation with local government bodies in matters of environmental impact assessments and nature conservation;
- 6) performing tasks related to the Natura 2000 network as referred to in the Act on nature conservation.

**3) Regional Director for Environmental Protection** is a non-combined government administration body subordinate to the General Director for Environmental Protection and a body in the field of nature conservation. The Regional Director for Environmental Protection shall implement his tasks with the help of the Regional Directorate for Environmental Protection, which is a state-owned budgetary unit and in cooperation with directors of landscape parks or landscape park complexes. Nature conservation tasks are implemented by the Regional Director for Environmental Protection with the help of the Regional Nature Conservator, who is his deputy.

The most important competences of the Regional Director for Environmental Protection with regard to nature conservation include:

- 1) creation and liquidation of forms of nature conservation under the Act on nature conservation;
- 2) conservation and management of Natura 2000 sites and other forms of nature conservation, based on and within the scope of the Act on nature conservation;
- 3) issuing decisions under the Act on nature conservation;
- 4) conducting proceedings and implementing other tasks referred to in the Act of 13 April 2007 on environmental damage prevention and remediation ([Journal of Laws 2018, item 1616, as amended](#));
- 5) cooperation with local government bodies in matters of environmental impact assessments and nature conservation.

It is pointed out in the doctrine that the Regional Director for Environmental Protection has the **status of victim** in cases regarding criminal offences which cause damage to the natural environment, in areas covered by such forms of nature conservation as nature reserves or Natura 2000 sites. This is due to the fact that, since the Regional Director for Environmental



Protection, under the nature conservation legislation, supervises the above-mentioned forms of nature conservation, representing the State Treasury in this respect, the offences committed in these areas give the Regional Director for Environmental Protection the status of victim in such cases. The fact that the Regional Director for Environmental Protection is granted the status of victim entails a possibility of his role in the proceedings as an **accessory auxiliary prosecutor**.

**4) Inspection for Environmental Protection** has been established to control the compliance with the environmental legislation and to examine and assess the condition of the environment (Article 1 of the Act of 20 July 1991 on the Inspection for Environmental Protection - [Journal of Laws 2019, item 125 as amended](#)). The bodies of the Inspection for Environmental Protection are:

- a) **General Director for Environmental Protection** being a central government administration body supervised by the Minister of the Environment;
- b) **Regional Director for Environmental Protection** being a combined government administration body in the region.

The most important tasks of the Inspection for Environmental Protection with regard to protection of the environment, including nature conservation, include:

- 1) control of entities using the environment within the meaning of the Environmental Protection Law with regard to the compliance with the environmental legislation;
- 2) conducting state monitoring of the environment;
- 3) making decisions suspending activities carried out in breach of the environmental requirements or in breach of the conditions of using the environment;
- 4) implementing tasks with regard to preventing and remediation of environmental damage;
- 5) cooperation with regard to protection of the environment with other control authorities, law enforcement bodies and judicial bodies, other state administrations bodies, local self-government bodies and civil protection bodies, as well as social organisations.

**5) [The Police](#)** are the main service whose statutory task is to fight crime. In matters related to nature conservation, the Police (most often at the level of regional, district and municipal headquarters), *inter alia*, accept a notification of a suspected crime reported by the Regional Director for Environmental Protection and conduct a verifying procedure and, if necessary, refer the case to the prosecutor with a request to initiate a preparatory proceeding. If the prosecutor decides to initiate the preparatory proceeding, he may order the Police to perform these activities.

**6) [Prosecutor's Office](#)** – is composed of the Public Prosecutor General, National Public Prosecutor, other deputies of the Public Prosecutor General and prosecutors of common organisational units of the prosecutor's office and prosecutors of the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation, hereinafter referred to as the "Institute of National Remembrance". The organisational units of the prosecutor's office are: National Public Prosecutor's Office, regional prosecutor's offices and district prosecutor's offices. In matters related to nature



conservation, district prosecutor's offices are most often involved.

The Prosecutor shall, in principle, initiate the preparatory proceeding or joins the proceedings already initiated if the social interest requires so. The prosecutor, after receiving a complaint, may initiate a proceeding and either personally conduct an investigation or entrust it to the Police. From the point of view of liability for crimes against nature, the role of the prosecutor as a public prosecutor is essential. It is the prosecutor who refers the indictment to court, and then attempts to ensure that the perpetrator of the offence incurs the greatest possible responsibility for his act, while ensuring that the punishment does not exceed the permitted term.

**7) Courts** – [common courts](#) are district courts, regional courts and appeal courts. Common courts have jurisdiction in matters not belonging to administrative courts, military courts and the Supreme Court and also implement other tasks related to legal protection, entrusted to them by way of acts. From the point of view of proceedings related to crimes and offences against the natural environment, the major part is played by district courts. With regard to protection of the environment, including nature conservation, apart from criminal liability, it is also possible to call the perpetrator to administrative and legal liability. The proceeding in the above-mentioned regard is the responsibility of public administration bodies, however, under control of administrative courts which examine the legality of decisions made during such proceeding. [Administrative courts](#) are the Supreme Administrative Court and voivodeship administrative courts.

**8) Social organisations** should also be included among entities involved in legal nature conservation, whose authority to act in the above-mentioned regard results from Article 74(4) of the [Constitution](#). As a social organisation, we understand professional, self-government, cooperative and other social organisations. This definition is open, with a very extensive subjective scope. The **environmental organisation** is a social organisation whose statutory objective is protection of the environment. The rights of social organisations to take activities for protection of the environment, and thus for nature conservation, have their sources in civil, criminal, but above all in administrative law. In the context of administrative law, there are two sources of rights. The first one is Article 31 of the [Administrative Procedure Code](#), which gives social organisations the right – in matters regarding other persons – to request:

- a) initiation of a proceeding;
  - b) admission to participate in a proceeding,
- provided it is justified by statutory objectives of this organisation and supported by social interest.

The second legal basis for the operation of environmental organisations (only environmental organisations, not social organisations in general) is the provision of Article 44(1) of the [Act on the provision on information on the environment](#), pursuant to which environmental organisations, which, by referring to their statutory objectives, report their willingness to participate in a specific proceeding requiring participation of the society, participate in this proceeding as a party. Pursuant to Article 24 of the Act of 13 April 2007 on environmental damage prevention and remediation ([Journal of Laws of 2018, item 954, as amended](#))



anyone can notify to an environmental protection body the occurrence of either a direct threat of environmental damage or environmental damage. The environmental organisation which makes a notification pursuant to the above article based on which the proceeding has been initiated, has the right to participate in this proceeding as a party.

Social organisations have obtained legal possibilities of participation in nature conservation, particularly pursuant to the Act on nature conservation. In accordance with its provisions, social organisations, *inter alia*:

- a) participate in establishing a conservation plan (Article 19(1a), Article 28(4), Article 29(6) of the [Act on nature conservation](#))
- b) participate in the proceeding the subject of which is to prepare a draft programme for conservation and sustainable use of biological diversity along with a draft action plan of the programme for conservation and sustainable use of biological diversity along with a draft action plan (Article 111(2) of the Act on nature conservation).

**9) National Revenue Administration** is a specialised government administration implementing tasks related to realising income due to taxes, customs duties, fees and non-fiscal budgetary revenues, protecting interests of the State Treasury, protecting the customs area of the European Union, protecting the environment and [Convention on International Trade in Endangered Species of Wild Fauna and Flora](#). Pursuant to Article 33(1)(10)(i) of the, tasks implemented by the customs and tax office, being a unit of the National Revenue Administration, include recognition, detection and combating of crimes and offences laid down in the Act on nature conservation and consisting in, *inter alia*:

- transporting across the border of the European Union a specimen of species subject to protection without a document required or against its terms ([Article 128\(1\) of the Act on nature conservation](#)),
- infringing the European Union legislation on protection of wild animal and plant species with regard to regulation of marketing these species through failure to submit an import declaration, use of specimens of particulate species for any purpose other than that indicated in an import license, unauthorized use of exemptions from orders in marketing of artificially reproduced plants, offering sale or purchase, acquisition or deriving, use or displaying to the public for commercial purposes, sale, keeping or transport for the purpose of selling specimens of particular plant or animal species, use of a permit or certificate for a specimen other than that for which it was issued, submission of an application for an export, import or reexport licence or a certificate without informing of previous rejection of an application ([Article 128\(2\) of the Act on nature conservation](#))
- infringing the prohibition concerning animals dangerous to human life and health ([Article 131\(4\) within the scope referred to in Article 73\(1\)\(2\) of the Act on nature conservation](#)),
- importing, keeping, breeding, reproducing or selling in the country, without a permit or in contradiction to its terms, alien plant, animal or fungi species, which, in case of releasing into the environment, may pose a threat to native species or natural habitats ([Article 131\(10\) of the Act on nature conservation](#)),



- infringing, without a permit or in contradiction to its terms, the prohibitions in relation to plants, animals or fungi under species protection ([Article 131\(14\) of the Act on nature conservation](#)).

## **Regimes of legal liability with regard to protection of the environment, including nature conservation**

The provisions governing the content and application of institutions of legal liability related to protection of the environment, including nature conservation, are contained in a number of acts, both directly related to protection of the environment and being of more general nature. The Environmental Protection Law contains, in its content, a separate section (title VI), which includes the issues related to three separate types of liability – civil, criminal, administrative. However, these provisions, in principle, are not a comprehensive regulation of the issue.

Consequently, the system of provisions on legal liability related to obligations concerning protection of the environment, including nature conservation, includes:

1) in the field of criminal liability – basic types of environmental crimes governed by the provisions of the Criminal Code, supplemented by various types of crimes related to violating the provisions of specific acts and by the provisions on the liability of collective bodies, as well as a very extensive set of various types of offences, consisting in infringing the protection obligations laid down in the provisions of environmental acts and prosecuted under those acts (e.g. section II title VI of the Environmental Protection Law);

2) in the field of administrative liability – several instruments of general nature governed by the provisions of section III title VI of the Environmental Protection Law and a number of specific instruments related to enforcing specific obligations governed by the provisions of both the Environmental Protection Law and specific acts applicable under these acts; since May 2007, of specific and great importance are the provisions on environmental damage prevention and remediation, contained in a separate act.

3) In the field of civil liability – above all, the general provisions contained in the Civil Code, to some extent modified or supplemented by the provisions of title VI of the Environmental Protection Law; their complement are the provisions contained in certain specific acts.

It should be stressed here that the behaviour sanctioned by the regimes of criminal, administrative and civil liability covers a very wide range of factual situations. This can cause some difficulties for entities using the environment and not only due to the fact that the system is extensive and complicated. As a rule, entities using the environment are examining their behaviour in the light of potential criminal liability and they consider the lack of such liability as legitimisation of the correctness of action. An important problem is the issue of overlapping of administrative and criminal liability. It is possible that a single act of the perpetrator meets the criteria of a crime or offence and the hypothesis of the administrative and legal norm. The existing legislation allows for a possibility of incurring negative legal consequences on a basis of both types of liability at a time.



## **Criminal liability. Crimes and offences against the environment, including against nature.**

The most important code crimes against the environment have been governed in Chapter XXII of the [Criminal Code](#) (hereinafter referred to as the CC.) *Crimes against the environment*, consisting of only eight articles, which can be divided into two distinct groups:

1) crimes related to protection of the environment, including traditional nature conservation (Articles 181, 187 and 188 of the CC);

2) crimes related to contamination, including waste and radiation (Articles 182-186 of the CC).

As regards non-code crimes, special attention from the point of view of the subject matter of this project should be paid to crimes governed by Articles 127a, 128 and 128a of the Act on nature conservation concerning, as a rule, international trade in protected species.

Since offences relate to the lower social harm, the liability for them is much more smaller than for crimes. In order to make a distinction between them, it is necessary to pay attention mainly to several circumstances, which are presented in the table below.

	<b>Crimes</b>	<b>Offences</b>
1.	In principle, codified in the Criminal Code.	In principle, codified in the Code of Offences
	If contained in other acts, the provision of the given act specified that this is a crime/an offence or we conclude on this based on punishment which may be imposed due to a given act.	
2.	May be punished by: <ul style="list-style-type: none"> <li>• fine in day rates,</li> <li>• restriction of liberty from 1 month to 2 years,</li> <li>• imprisonment from 1 month to 15 years,</li> <li>• imprisonment of 25 years,</li> <li>• life-long sentence (Articles 32 - 37 of the CC).</li> </ul>	May be punished by: <ul style="list-style-type: none"> <li>• arrest from 5 to 30 days,</li> <li>• restriction of liberty for 1 month,</li> <li>• fine defined as an amount, i.e. from PLN 20 to 5,000,</li> <li>• reprimand (Articles 18 - 24 of the <a href="#">Code of Offences</a> – hereinafter referred to as the CO).</li> </ul>
3.	Additional penalties imposed on the perpetrator of the crime, apart from or sometimes instead of punishment, are punitive measures (Article 39 of the CC)	Additional penalties imposed on the perpetrator of the offence, apart from or sometimes instead of punishment, are punitive measures (Article 28 of the CO).
	The Criminal Code provides for a more extensive catalogue of punitive measures than the Code of Offences.	
4.	The proceeding aimed at punishing the perpetrator is conducted pursuant to the provisions of the Act of 6 June 1997 Criminal Procedure Code (Journal of Laws of 2016, item 1749, as amended).	The proceeding aimed at punishing the perpetrator is conducted pursuant to the provisions of the Act 24 August 2001 Petty Offences Procedure Code (Journal of Laws of 2016, item 1713, as amended).



4.	Are acts injurious to the public to an extent higher than negligible (Article 1 § 2 of the CC)	Are acts injurious to the public but this injuriousness is not gradable (Article 1 § 1 of the CO).
5.	The Criminal Code provides for criminal liability for acts committed abroad (chapter XIII of the CC)	In the Code of Offences, liability for an offence committed abroad takes place only when provided for by special provision (Article 3 of the CO).
6.	Liability for a crime pursuant to the CC (Article 10 § 1) or for an offence pursuant to the CO (Article 8) is held by the perpetrator who at the time of committing this act turned 17.	
	Article 10 § 2 of the CC provides for, in exceptional situations, liability of the perpetrator who turned 15.	The CO does not contain any regulation on liability of the perpetrator below 17.

The essential element to be taken into account is the **possibility of incurring liability for offences** in accordance with Article 8 of the CO only by natural persons. **Punishment for committing an offence** as defined in Articles 127 and 131 of the Act on nature conservation may be a **fine** or **arrest**, while these penalties can be imposed alternatively, but never jointly. The Act on nature conservation does not determine the gravity of these penalties, therefore, the provisions of the CO, governing this gravity, shall be applied here accordingly. It must also be pointed out here that, according to the wording of Article 129 of the Act on nature conservation in the event of punishment for an offence referred to in Article 127 or Article 131, the court may declare:

- 1) **forfeiture of items** used to commit an offence and of items, plants, animals or fungi from an offence, even if they do not belong to a perpetrator;
- 2) **obligation to restore the previous condition**, and if such an obligation was not practicable – **to pay compensation** of up to PLN 10,000 for a social organisation working for nature conservation or to the voivodeship fund for environmental protection and water management having jurisdiction over the scene of an offence.

### **Practical problems in criminal proceedings and offence proceedings with respect to perpetrators of crimes and offences against the environment, including against nature.**

According to the wording of Article 45(1) of the CC, punishability of an offence shall cease **if one year has elapsed since the time of its committing**. If the **proceeding has been initiated** during that period, punishability of an offence shall cease **2 years** after the offence has been committed. Practice shows that such a period is insufficient to conduct the whole proceeding, crowned by a legally valid judgment, and the result of it is a large number of prescriptions of offences against the environment, including against nature.

The above phenomenon is significantly affected by another practical problem, namely the **erroneous qualification of the perpetrator's act** made during the preparatory proceeding by law enforcement authorities and resulting in their refusal to initiate a



proceeding. The reason for this phenomenon can be the complicated matter of environmental protection law and insufficient knowledge and experience of law enforcement bodies in this regard. When looking for a solution to this problem, we should point to the role which can be played by employees of regional directorates for environmental protection, who, holding specialised knowledge on nature conservation (including access to databases, maps, photographs, studies) and experience, could support law enforcement bodies in their proceedings. Developing a model of cooperation between regional directors for environmental protection and law enforcement bodies in matters on nature conservation could make a significant contribution to increasing the effectiveness of prosecuting crimes and offences against nature.

Moreover, both in the Criminal Code and in the special acts determining criminal liability for crimes and offences committed against the environment, including against nature, **determining the perpetrator of an act creates considerable problems as regards interpretation.**

