



**THE INTERSECTION BETWEEN CRIMINAL AND
ADMINISTRATIVE LIABILITY OF A LEGAL ENTITY FOR
ENVIRONMENTAL VIOLATIONS IN THE CONTEXT OF
SUSTAINABLE DEVELOPMENT**

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ABSTRACT

One of the measures which is able to ensure the implementation of sustainable development aims is the institute of legal entities' environmental legal liability and its effective application. Three sorts of legal entities' legal liability can be applied in Lithuania, namely, civil, criminal and administrative liability.

Evaluating from the prospect of implementation of sustainable development aims, the potentially effective sorts of legal liability in the environmental sphere are legal entities' administrative and criminal liability.

Legal entities violating the norms of environmental law set economic aim above social and environmental aims, hence legal entities also encroach on sustainable development and do not allow for a striving towards the combinability of environmental, economic and social societal aims. This circumstance presupposes the demand to supplement the conception of the object of environmental law violation by both human health and life and sustainable development categories.

This article tries to answer the questions as to whether administrative or criminal liability should be applied to the legal entities for offences against the environment, and to which liability – criminal or administrative – a legislator should render priority in protecting the environment from illegal actions of the legal entities.

KEYWORDS

Criminal liability, administrative liability, sustainable development, legal entity, environmental violations

INTRODUCTION

Industrial and other economic activities have a huge influence on the environment, and often such activities result in damage to the environment. No doubt, legal entities, being among the most active participants of social relationships in the modern civilized state, are also among the most important actors in the development of industry, transport, energy and other branches of the economy.

Thus, legal entities that have the pursuit of profit as the main purpose of their activities also become a part of major recourses of threats to the environment. Of course, while pursuing their targets of organizational activities, legal entities employ their economic, political and other social powers, and this way those entities have the capacity to make huge positive or negative influence on the lives of people, the society and the state. The permanently increasing promulgation of ideas of globalization by legal entities may be an example of such influence also having an impact on solutions of environmental problems.¹

Those objective reasons are decisive as regards the need of legal regulation, and protection of environment, as well as striving to ensure coordination of economic, social and environmental interests, and they become a priority course of every state.

In this context a mechanism of enforcement, used by the state, and an institute of legal liability are among the major measures, designed to ensure complying of legal entities with the requirements of environmental law.

First of all, the accountability of legal entities is related to the essential principle of social justice. Legal entities must be liable for their activities and for damage caused to persons, property or the environment. Principle 13 of Rio Declaration on Environment and Development (1992) lays down clearly that states, as a matter of priority, must adopt their national law on liability for damages to the environment and on compensation for victims of pollution.²

United Nations Environment Programme (UNEP) circulated a communication in May 2002, stating that

There was a growing gap between the efforts to reduce the impact of business and industry on nature and the worsening state of the planet and that this gap is

¹ Anup Shah, "Corporations and the Environment," (May, 2002): 1 // <http://www.globalissues.org/TradeRelated/Corporations/Environment.asp> (accessed August 8, 2006).

² Greenpeace, "Corporate liability": 1 // <http://www.greenpeace.eu/issues/corplia.html> (accessed August 8, 2006).

due to the fact that only a small number of companies in each industry are actively integrating social and environmental factors into business decisions.³

Lithuanian legal doctrine traditionally states that

Legal liability as means of environmental protection is application of law and means of constraint, established by state, to violators of environmental law in order to punish them and to change the nihilistic attitude to requirements of environmental protection as laid down by the law.⁴

However, this kind of attitude to legal liability in the sphere of environmental protection does not comply with the realities of modern life. In the context of the implementation of sustainable development, the notion and purpose of legal liability as a means of environmental protection must change. Legal liability must be more than the mere application of the state's means of constraint; it must be targeted to the coordination of environmental, economic and social aims of society, as well as to protection of vitally important interests of human beings, society and state from internal and external hazards that may arise in the fields of environmental, economic and social development.⁵

Anyway, the negative impact of legal entities on the environment does not mean those entities or their members are evil-minded and destroy the environment

³ UN agency reports, "Efforts to reduce industrial effect on environment "uneven" // <http://www.un.org/apps/news/story.asp?NewsID=3677&Cr=sustainable&Cr1=development> (accessed August 9, 2006).

⁴ Antanas Marcijonas and Bronius Sudavičius, *Ekologinė teisė* (Ecological law) (Vilnius: Eugrimas, 1996), p. 246–247.

⁵ The Constitutional Court of the Republic of Lithuania has said its word as regards the sphere of protection of environment, indicating that the state, which has a constitutional obligation to act in such a way as to guarantee protection of natural environment, wildlife and plants, individual natural objects and areas of particular value, and also to guarantee sustainable use of natural resources, their restoration and augmentation, and may legislatively establish the legal regulation under which the use of certain natural objects (natural resources) be restricted. The Constitutional Court has underlined that limitations and prohibitions targeted at ensuring protection of areas of particular value, which make a public interest, may and must be established not only in regard of the state and municipalities, as the owners of the relevant object, situated in the areas of particular value, but as well in respect to other owners and users of such objects, i.e. natural and legal persons. Therefore also the limitations and prohibitions, which interfere with property rights of all the owners, including owners of private land plots, forests, parks and water bodies, may be established. Constitutional Court has emphasized that all the above mentioned limitations and prohibitions shall be constitutionally grounded and shall not inhibit rights of owners and other persons more than it is necessary for achieving the aims of public interest. The ruling also states that *the duty of the state to take care of protection of natural environment, individual natural objects, of areas of particular value, which is consolidated in the Constitution, if construed in the context of the constitutional provisions establishing the protection of the rights of ownership, coordination of the interests of society and the person, legitimacy and justice, obligates the legislator to provide for legal liability for disregard of the established limitations and restrictions and for violations of the legal regime of natural environment, individual natural objects and especially of areas of particular value.* The Constitutional Court also emphasised that in a state under the rule of law the general principle of law cannot be disregarded whereby one may not enjoy any profit from a violation of law committed by him. *Thus, the Constitution does not tolerate a situation, where legal acts have not established any duty to the violator of law to whom a sanction was applied (he was punished) for disregard of the established limitations and prohibitions, for violations of the legal regime of natural environment, individual natural objects and of areas of particular value, to restore what had been destroyed, devastated, impoverished, exhausted, polluted or disturbed otherwise. The effect of such violations of law cannot be made lawful (legalised) under any bases nor any circumstances by means of decisions later adopted by certain institutions or officials (On the limitation of the rights of ownership in areas of particular value and in forest land, Ruling of the Constitutional Court of the Republic of Lithuania (March 14, 2006) // http://www.lrkt.lt/Pranesimai/txt_2006/L20060314.htm (accessed September 9, 2006)).*

on purpose. A more fundamental aspect is that the negative impact of the business on the environment most likely is a recent way for business development and means for seeking profits and being competitive in a market.⁶ And in order to achieve the aims of sustainable development one always must obey the requirements of environmental law.

Keeping in mind that sustainable development is a long-term ideology for the development of society, the institute of the legal liability of legal entities as regards environmental protection cannot be analyzed without considering the aims of the aforementioned ideology.

One of the means for achieving the aims of sustainable development consists of legal regulation by way of the institution of legal entities as regards the environmental sphere in order to achieve the objectives of environmental, economic and social nature. It is said that accountability of legal entities constitutes one of the essential aspects in pursuing the aims of sustainable development.⁷

The basic law on environmental protection of the Republic of Lithuania – the Law on Environmental Protection of the Republic of Lithuania – provides that persons are liable for violations of environmental law under the law of the Republic of Lithuania; i. e. legal amenability is applied to entities for infringements of environmental regulations.⁸ The legal entities that have violated environmental law may become subjects of three types of legal liability, namely, civil, criminal or administrative liability. However, we should admit that there is little attention paid by Lithuanian legislators to the efficiency of legal liability, and it is more concentrated on regulation of the institute of civil liability of legal entities in the sphere of environmental protection, i. e. onto a mechanism of compensation of damages to environment. Meanwhile the State Strategy for the Environmental Protection of the Republic of Lithuania provides that

Expenses regarding compensation of damages to environment almost always are greater than expenses for prevention of such damages, especially having in mind that sometimes any compensation for damages to environment is not possible at all; thus, prevention is more reasonable way of action than attempts of solving a problem after it has already emerged.⁹

Such a provision of the environmental protection of the Republic of Lithuania supposes a priority of reasonable state policy, i. e. the policy, based on the

⁶ Anup Shah, *supra* note 1.

⁷ Greenpeace, *supra* note 2.

⁸ *Lietuvos Respublikos aplinkos apsaugos įstatymas* (Law on environmental protection of the Republic of Lithuania), Official Gazette, 1992, no. I-2223.

⁹ *Dėl valstybinės aplinkos apsaugos strategijos patvirtinimo* (On approval of state strategy of environmental protection), Official Gazette, 1996, no. 103-2347 (Decision of the Seimas of the Republic of Lithuania).

implementation of the principle of prevention of environmental violations.¹⁰ Thus, state policy must be pointed onto the forms of legal liability that are basically designed to prevent environmental violations and not only to compensate for damages.

Criminal and administrative liability in the environmental sphere are considered to be the forms of such a legal liability. However, the institutes of criminal and administrative law in the sphere of environmental protection must be seen in the context of sustainable development, and the prevention of environmental violations is not supposed to upstage the economic and social objectives of society.

As criminal liability is the sternest type of liability, employing criminal liability in the sphere of environmental protection can be in contravention with the aims of sustainable development, as targets of environmental protection can set aside economic and social goals. Such a situation supposes the importance of legal regulation of administrative liability in the sphere of environmental protection, as this type of liability, in contrast to civil liability, addresses prevention of environmental violations, leaving behind compensation for damages; but, on the other hand, administrative liability is milder in comparison with the criminal one, thus there is ground for stating that striving for environmental goals by means of this institute will not blanket out other components of sustainable development, i.e. economic and social objectives.

Unfortunately, the legal regulation of administrative liability of legal entities in the sphere of environmental protection has gaps and is going chaotically; it is not designed for the implementation of the ideology of sustainable development in the state policies, nor are there the consolidated means of prevention of environmental violations. Or the above means are not being implemented efficiently, and there is not enough incentives for voluntary compliance with the environmental requirements.

The *subject of the study* of the article is the delimitation of legal entities' criminal and administrative liability for environmental violations in the context of sustainable development.

The *aim* of the article is to examine the delimitation of legal entities' criminal and administrative liability for environmental violations using a systematic

¹⁰ Description of the principle of prevention is laid down in Article 4 of the Law on the Enforcement of Environmental Protection of the Republic of Lithuania, where in Point 1 it is described that the principle of prevention means inhibiting violations of law and other legal acts on environmental protection and use of natural resources, and also seeking to avoid negative impact to environment (*Lietuvos Respublikos aplinkos apsaugos kontrolės įstatymas* (Law on the enforcement of environmental protection of the Republic of Lithuania), Official Gazette, 2002, No. 72-3017, art. 4, sec. 1).

approach, and also to evaluate the efficiency of the said types of legal liability in the context of implementation of the aims of sustainable development.

In order to achieve the defined aim the following *objectives* have been set in this study: (1) to present the conception of the ideology of sustainable development; (2) to reveal the conception of administrative liability of legal entities in the context of sustainable development, also depicting its target and efficiency; (3) to evaluate the aspects and efficiency of criminal liability of a legal entity for environmental violations in the context of sustainable development.

1. THE CONCEPTION OF THE IDEOLOGY OF SUSTAINABLE DEVELOPMENT

Rapidly growing negative intervention of global economical development into the environment has become one of the most important problems of many countries, and the need of environmental protection has become a challenge to all humanity.

The refusal of further economic development and the strict limitation of human desire to possess ever increasing number of goods provided by civilisation would be one of the ways to protect the environment and humanity. But this contradicts the objective laws of the evolution of society and human nature, and thus, some other ways must be found to solve the rapidly increasing problems of the environment without rejecting further economic growth.¹¹

A few decades ago the international community found a universal method,¹² the method of *sustainable development*, which can be described in essence as the coordination of three social goals on equal footing, namely, environmental, economic and social goals.

¹¹ The Project of the National Strategy of Sustainable Development of the Republic of Lithuania states that, as the balance to prevailing consumer-oriented attitude to environment, the concept of survival of humankind was also promoted, and according to this concept a rapid economic development was seen as totally contradicting with clean and healthy environment. At the beginning of their active functioning social movements saw the only way of survival for the humankind, i. e. rejecting further economical development and strict limitation of human desire to possess ever increasing number of goods provided by civilisation (*Lietuvos Respublikos nacionalinės darnaus vystymosi strategijos projektas* (Project of the national strategy of sustainable development of the Republic of Lithuania), 2003 // <http://www.am.lt/VI/files/0.063911001049192382.pdf> (accessed May 6, 2006)).

¹² During the UN conference of Stockholm of 1972 there was formulated a provision that economical development must go employing the most efficient use of natural resources and considering the impact on environment. Due to efforts of international environmental organizations and institutions, in 1980 a very important document - World Conservation Strategy- was published, and this strategy was actually the basis for sustainable development. This document rejects *confrontation of economical development and environmental protection* and it clearly declares that development and environmental protection are not contradictory matters, and that sustainable use of natural resources makes an integral part both of economical development and of environmental protection (Romualdas Juknys, "Darnus vystymasis – pagrindinės nuostatos ir miškų ūkio vaidmuo jas įgyvendinant" (Sustainable development – basic provisions and the role of forestry in their implementation), *Baltijos miškai ir mediena* No. 2 (2) (2003) // <http://www.bmm.lt/straipsnis.cfm?id=2> (accessed May 12, 2006)).

In the Summit of Rio de Janeiro of 1992, where Lithuania also participated as an independent state, *sustainable development was validated as the main long-term ideology for the development of society*.

More than 170 states signed the declaration which was adopted at the Summit. They decided that sustainable development must become the main ideology of development for those states while seeking for compromises between the environmental, economic and social goals of society in order to create global welfare for recent and future generations without crossing the safe limits of negative impact on the environment.¹³

The global community, being aware that attempts to implement major goals of society without consolidating them does not lead to ensuring the welfare of the world community, described the strategy of sustainable development as a permanent, dynamic and continuous process, which demonstrated itself in the consolidation of major goals and their implementation. It is underlined in juridical literature that sustainable development is not a result of the process, it is the process itself, which is continuously going on, and it is a dynamic development based on human belief in future perspectives.¹⁴

Despite the fact that the ideology of sustainable development has its roots basically in the need to protect the environment from negative economical intervention, it should be said that the above mentioned ideology does not see the environment as some absolute, indefeasible and sacred value. Realizing that many branches of the economy cannot function without using the environment and its resources, the ideology of sustainable development acknowledges the need for coordinating economic and social progress and environmental protection.¹⁵ It should be mentioned that sustainable development is known as a useful concept and also as a source of basic principles, which emerged both at international and at national levels during the last two decades. The basic principles of society have been identified, purified and integrated in the ideology of sustainable development.

The principles of society, which have been integrated into the frame of the ideology of sustainable development, include human rights, economic, social and environmental goals, as well as equality and the fight against poverty, prevention of decline in human health and detrimental use of natural resources and ecosystem,

¹³ "Jungtinių Tautų vystymo programos (JTVP) ir Lietuvos Respublikos užsienio reikalų ministerijos leidinys" (Publication of the United Nations Development Program and Ministry of the Foreign Affairs of the Republic of Lithuania) // http://www.undp.lt/files//Turinys/jto_bukletas_lt.pdf#search=%22Nacionalin%C4%97s%20darnaus%20vystymosi%20strategijos%20ataskaita%22 (accessed May 12, 2006).

¹⁴ A. M. G. Cornelissen et al., "Assessment of sustainable development: a novel approach using fuzzy set theory," *Erasmus Research Institute of Management, Report Series Research in Management* (2000) // <http://ideas.repec.org/p/dgr/eureri/200024.html> (accessed May 9, 2006).

¹⁵ INTOSAI Working group on Environmental Auditing, "Sustainable Development: The Role of Supreme Audit Institutions," (2004) // <http://www.environmental-auditing.org> (accessed May 15, 2006).

and also they include sustainable use and the principle that the “polluter pays”, as well as the involvement of society, and the accessibility of information and justice.¹⁶

It was important that the principles of environmental protection, economical development, social prosperity and other principles, as mentioned above, were not new, but their integration into unique scheme of politics, which was acknowledged internationally, provided good prospects for social policy.

After gaining its international recognition, sustainable development has become the most important conception of the politics of the European Union,¹⁷ as well as the main goal of the European Union. The conception of sustainable development interweaves itself into all the policies, actions and strategies of the European Union; this conception is targeted at designing and implementing economical, environmental and social policies in a way they enhance each other.¹⁸

Common provisions regarding sustainable development of the European Union were formally worded in the course of review of policies and actions, related to environment and sustainable development of the European Community, laid down in the programme towards sustainable development. This review was conducted and adopted by the European Parliament and Council of the Europe in 1998. The strategy of sustainable development of the European Union was adopted at the European Summit of Göteborg (Sweden) in 2001. The Summit stated that *sustainable development is a long-term strategy of the European Union, ensuring clean and healthy environment and improving the quality of life for recent and future generations*. While implementing this strategy it is necessary for the economic growth to speed up social progress and improve the state of the environment, and also environmental policy must be economically efficient. This strategy pays particular attention to differentiation between economic growth against the use of resources and impact on environment, i. e. aiming at the economic growth situation where the tempo of use of natural resources and environmental pollution grow more slowly or do not grow at all in comparison to the economic growth.¹⁹

¹⁶ Pearl Eliadis and Donald Lemaire, “Normative Approaches to Policy: Integrating Legal Policy Perspectives,” *Horizons* Vol. 6, No. 4 // https://policyresearch.gc.ca/doclib/HOR_v6n4_200403_e.pdf (accessed May 3, 2009).

¹⁷ Anastasios Xepapadeas and Dimitra Vouvakis, “Criteria for Assessing Sustainable Development: Theoretical Issues and Empirical Evidence for the Case of Greece,” *FEEM Working Paper* No. 59.05 (April 2005) // <http://ssrn.com/abstract=712484> (accessed May 15, 2006).

¹⁸ *On the review of the Sustainable Development Strategy. A platform for action*, Communication from the Commission to the Council and the European Parliament, Brussels, 27.02.2006, COM (2005) 658 final/2.

¹⁹ Lietuvos Respublikos Statistikos departamentas (Department of the Statistics to the Government of the Republic of Lithuania), “Darnaus vystymosi rodikliai” (Sustainable development indicators), (2005) // http://www.std.lt/uploads/metr_2005/lt/32/content.html (accessed May 11, 2006).

The Council of the European Union adopted the Renewed EU Sustainable Development Strategy for the enlarged EU in June 2006.²⁰ The aim of the renewed strategy is to identify and develop actions to enable the European Union to achieve a continuous long-term improvement of quality of life through the creation of sustainable communities able to manage and use resources efficiently, able to tap the ecological and social innovation potential of the economy and in the end able to ensure prosperity, environmental protection and social cohesion.²¹

The Government of the Republic of Lithuania drafted and adopted the national strategy for sustainable development early in 2003,²² when it declared that sustainable development consisted of compromise among the environmental, economic and social goals of society, thus creating possibilities for the achievement of overall welfare for recent and future generations at the same time without violating the limits of justifiable impact on environment.²³

Legal regulation and environmental education of legal entities must be, in particular, clear and coordinated. It is stated that the negative impact of activities of legal entities on the environment has become a great challenge both to Europe and to the whole world,²⁴ thus one of the basic questions in solving environmental problems is ensuring efficient compliance with the requirements of environmental law as regards legal entities,²⁵ and also one of the means for ensuring implementation of sustainable development goals is a coordinated legal regulation

²⁰ *Renewed EU Sustainable Development Strategy*, Council of the European Union, 10117/06, Brussels (9 June 2006) //

<http://register.consilium.europa.eu/pdf/en/06/st10/st10117.en06.pdf#search=%22renewed%20Sustainable%20development%20strategy%20for%20an%20enlarged%20EU%22> (accessed July 13, 2006).

²¹ Official Website of the European Union, "Sustainable Development" //

<http://ec.europa.eu/environment/eussd/> (accessed August 14, 2006).

²² *Dėl nacionalinės darnaus vystymosi strategijos patvirtinimo ir įgyvendinimo* (On adopting and implementation of national strategy of sustainable development), Official Gazette, 2003, no. 89-4029 (Decision of the Government of the Republic of Lithuania).

²³ It is worth highlighting that in 1997 the Ministry of Environment of the Republic of Lithuania adopted the Strategy for Environmental Education and Action Programme, where sustainable development included not only the need of coordination of environmental, economical and social needs, but also the notion of sustainable development had a cultural element in it. This document describes sustainable development as a long-term and stable development of society, satisfying need of humankind recently and in the future by sustainable use of natural resources and rebuilding those resources and also by conservation of the Earth to future generations. This is the development with coordination of the following aspects: *ecological* – development which does not violate the harmony of processes of animate and inanimate nature while using natural resources in sustainable manner and protecting the landscape and biological diversity; *economical* – economically efficient development while using natural resources reasonably; *social* – development of human independence and social identity, while encouraging overall participation in resolving local environmental problems; *cultural* – development, matching cultural and ethical values. Sustainable development is based on responsibility of all the states and their social groups, and on personal responsibility for nature and mankind, and also on implementation of that responsibility by their collective effort (*Lietuvos Respublikos visuomenės aplinkosauginio švietimo strategijos ir veiksmų programos* (Strategies of society environmental education and action programmes of the Republic of Lithuania), Official Gazette, 1998, no. 16-388 (Decision of the Government of the Republic of Lithuania)).

²⁴ Greenpeace, *supra* note 2.

²⁵ David C. Fortney, "Thinking Outside the "Black Box": Tailored Enforcement in Environmental Criminal Law," *Texas Law Review* Vol. 81, No. 6 (May 2003) //

<http://www.utexas.edu/law/journals/tlr/abstracts/81/81fortney.pdf> (accessed August 30, 2006).

of legal liability of legal entities in the sphere of environmental protection and the efficient application of the above mentioned instituted laws.

2. THE NOTION AND AIM OF ADMINISTRATIVE LIABILITY OF A LEGAL ENTITY IN THE SPHERE OF ENVIRONMENTAL PROTECTION

Administrative liability is a type of legal liability and it is mostly applied for environmental violations. Because of its character and aim this type of liability is seen as a potentially efficient type of legal liability as regards the coordination of the aims of sustainable development, i. e. environmental, economical and social aims.

In order to find the notion and aim of administrative liability in the sphere of environmental protection an analysis of the institute of administrative liability is necessary.

First we must say that in some countries the notion and aims of the institute of administrative liability are different from those in Lithuania. For example, France describes administrative liability as a duty (obligation) of authorities, institutions and state to compensate damages to persons in case they suffer ones because of unlawful actions (or inactivity) of the state and its administrative institutions in the course of administrative functions.²⁷ Meanwhile in other countries the notion and aims of administrative liability are very similar to the ones in Lithuania. For example, in Russia, administrative liability is described as a type of legal liability where persons authorised by state or officials apply sanctions to violators (natural and legal entities) for various violations as laid down by norms of administrative law.²⁸

However also in the countries whose notion and aims of administrative liability are different from those in Lithuania, there are provisions of administrative sanctions in legal acts in case of violations of provisions laid down in different legal acts, rules and regulations. As equivalent to the notion of "administrative liability", one can also see the notion of "administrative enforcement" which is used in foreign legal literature; the main feature of legal enforcement (in the meaning of administrative liability) is applying state constraints without employing judicial proceedings, and administrative sanctions that are applied on the basis of administrative procedures.

²⁶ Antanas Marcijonas and Bronius Sudavičius, *supra* note 4, p. 254.

²⁷ Responsabilité administrative // <http://www.anena.net/jurisque/thesaurus/texte/respadm.htm> (accessed May 1, 2006).

²⁸ I. A. Dmitriev, A. A. Evteeva, and S. M. Petrov, *Administrativnoe pravo* (Administrative law) (Moskva: Izdatelstvo eksmo, 2005) [in Russian].

It is said that a distinctive feature of administrative enforcement is the fact that this process is implemented outside the system of courts, though there are provisions for possibilities to bring the case to court at a certain stage of administrative procedure.²⁹

Lithuanian legal doctrine demonstrates that application of administrative sanctions can be equated to the institute of legal liability which is in force in Lithuania. A. Abramavičius and V. Mikelėnas state that "administrative liability displays an application of administrative punishment to people who have violated administrative law."³⁰

Administrative liability, as a tradition, is defined as

A separate type of liability applied to guilty persons who have violated administrative law, and it is applied by imposing on them and implementing administrative punishments as provided for in the law in order to combat violations of law and ensure legitimacy, law and order.³¹

Other resources state that

Administrative liability is a separate type of legal liability, which is applied according the procedure laid down in the law of administrative proceedings and to natural and legal persons who have violated administrative law; it is applied by imposing on them administrative punishments as provided for in the law in a view to ensure judicial order while implementing state administration.³²

Lithuanian jurisprudence also declares that "administrative liability is the obligation of a person to take responsibility for the violation of administrative law which he or she has committed."³³ Administrative liability is characterised by a very important measure in fighting not only administrative violations, but other violations of law as well. In particular an important role must be attached to preventive role of administrative liability in the fight against malignant violations of public order, thefts, and abusive practices in office, breakings of rules of the road, violations of law on environment and fire prevention, and other dangerous infringements of the law.³⁴ As it is said in Lithuanian resources on law,

Administrative liability applies for violations of administrative law, i. e. les hazardous violations as described in the Code of Violations of Administrative

²⁹ Marcia Mulkey, Adam Parker, and Gail Ginsberg, "Summary of workshop: Administrative enforcement mechanisms: getting authority and making it work" // <http://www.inece.org/5thvol2/3f.pdf#search=%22SUMMARY%20OF%20WORKSHOP%3A%20ADMINISTRATIVE%20ENFORCEMENT%20MECHANISMS%3A%20GETTING%20AUTHORITY%20AND%20MAKING%20IT%20WORK%20OR%20K%22> (accessed July, 9, 2006).

³⁰ Armanas Abramavičius and Valentinas Mikelėnas, *Įmonių vadovų teisinė atsakomybė* (Legal Liability of Corporate Managers) (Vilnius: VĮ Teisinės informacijos centras, 1999), p. 9.

³¹ Pranas Petkevičius, *Administracinė atsakomybė* (Administrative liability) (Vilnius: Justitia, 1996), p. 14.

³² Stasys Šedbaras, *Administracinė atsakomybė* (Administrative liability) (Vilnius: Justitia, 2005), p. 72.

³³ Genovaitė Dambrauskienė et al., *Lietuvos teisės pagrindai* (Basics of Lithuanian law) (Vilnius: Justitia, 2004), p. 164.

³⁴ *Ibid.*

Law. On the basis of administrative liability an obligatory character of restrictions, laid down by provisions of various branches of law (administrative, labour, economic, financial and other law.), is guaranteed.³⁵

Considering the notion and aims of the institute of administrative liability that prevails in Lithuania we can model a definition of administrative liability of a legal entity in the sphere of environmental protection. The administrative liability of legal entities in the sphere of the environment is a separate type of legal liability, which is applied to guilty legal entities who violated environmental administrative law, and it is applied by imposing on them and implementing administrative sanctions as provided for in administrative law in order to ensure compliance with environmental law, combat violations of environmental law and ensure obligatory character of environmental law provisions.

We should recognise that the presented definitions of administrative liability, as well as the definitions of environmental administrative liability of a legal entity as drafted shall comply with the staffing (normative) notion of law, because administrative liability is explained only as state enforcement on violators of law. As Prof. A. Vaišvila says, "here legal liability actually is equal to applying sanctions and to negative consequences for violators of law."³⁶ Thus, the presented definitions of administrative liability (including also environmental administrative liability of a legal entity) suppose superiority of the state against a person, but meanwhile the recent notion of law sees a person as a primary value and purpose. Thus we can conclude that the prevailing notion and purposes of administrative liability in Lithuania must transform as a matter of necessity. Legal literature says that despite a great practical and theoretical importance of the institute of administrative liability, jurisprudence on administrative liability has not done much in improving this branch of law.³⁷

In the context of the ideology of sustainable development, the notion and purpose of the environmental administrative liability of a legal entity must be accompanied by the duty of the institute of administrative liability in coordinating the environmental, economical and social aims of society. The purpose of administrative liability, being the most widely applied environmental legal liability, must change in the manner already mentioned. Also, the institute of administrative liability must become an instrument in order to implement the goals of sustainable development.

³⁵ Alfonsas Vaišvila, *Teisės teorija* (Legal theory) (Vilnius: Justitia, 2000), p. 361.

³⁶ *Ibid.*, p. 349.

³⁷ Audrius Bakaveckas et al., *Lietuvos administracinė teisė. Bendroji dalis* (Administrative Law of Lithuania. General Part) (Vilnius: Mykolas Romeris universitetas, 2005), p. 21.

It is declared that the problem of administrative liability is closely related to general problems of legal liability and, no doubt, some new and modern attitude regarding both the notion of this liability and its content is required.³⁸ Such a modern attitude towards administrative liability may be the new purpose of this institute, i. e. the obligation of coordination of different interests of society in the areas of its economical, social and environmental life.

The administrative liability of a legal person in the sphere of environmental protection must be aimed at the implementation of the aims of sustainable development, ensuring ecological safety, prevention of environmental violations and prevention of damages to environment; this kind of liability must also perform a 'disciplinary function' in order to keep legal entities from focusing solely on the economical goals of society while denying other goals, i. e. social and environmental interests of society. On the other hand, administrative liability, while being a very important regulator of social relationships and means for implementation of sustainable development, must not make a fetish of environmental goals. Integration of equally valuable society goals and compromise between them must become the main purpose of administrative liability.

The institute of environmental administrative liability of legal entities must become a means encouraging (and in the case of incompliance – enforcing) legal entities to pursue compromise between environmental, economical and social goals, and for taking all the possible precautionary measures in order that their activities comply with preserving a clean and healthy environment, as well as with social needs of society. The legal entity that does not voluntarily contribute to ensuring ecological safety and the implementation of sustainable development, on the basis of the institute of administrative liability, shall be forced to do so for the benefit of society. On the other hand legal regulation of environmental administrative liability must be also balanced, i. e. it may not be oriented only to the priority of social and environmental goals and 'suppression' or harnessing of economical goals because this can lead to the same important social³⁹ and environmental⁴⁰ consequences.

In the context of implementation of sustainable development goals the institute of environmental administrative liability of legal entities will be socially efficient only if the coordination of a consistent regulatory environment and a systematic attitude of the state instead of the fragmentary attitude to the institute of environmental administrative liability of legal entities shall take place, and also state policy will be directed to prevention of environmental violations.

³⁸ *Ibid.*

³⁹ For example, the bankruptcy of an enterprise and the resulting redundancy of its employees.

⁴⁰ For example, waste non-utilization resulting from the bankruptcy of an enterprise.

We should notice that environmental civil liability is regulated at the level of the European Union, and also there was an attempt made for environmental criminal liability, but administrative liability was left to national regulation. Of course, this might be the result of a diverse number of notions of the institute of administrative liability (e. g. French and Lithuanian notions). However administrative sanctions for environmental violations are applied in all the Member States of the European Union, thus, the question appears, if it is worth to introduce regulation of administrative sanction system for violations of environmental law not only at the national level, but at the level of the European Union as well, and to provide common principles of application of administrative sanctions.

3. ASPECTS OF THE CRIMINAL LIABILITY OF A LEGAL ENTITY FOR ENVIRONMENTAL VIOLATIONS IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT

One of the principles acknowledged worldwide regarding punishment is the principle of proportionality, which means that punishment should not trespass the boundaries of society's needs.⁴¹

In order to answer the question if administrative or criminal liability should be applied to the legal entities for the offences against the environment we should look to the nature and purposes of administrative and criminal law, because both branches of law try to solve social problems existing in a society while applying sanctions. Generally criminalization is used as the *ultimo ratio* instrument to protect vital interests such as life, health, property and alike. "It is some kind of a society defence from a danger, arising to its vital legal values."⁴² So in answering the question to which liability – criminal or administrative – a legislator should render his priority protecting environment from illegal actions of the legal entities, we need, first of all, to analyse the object of environmental law and environmental protection law, deciding whether vital legal values are going to be infringed.

Now it is already recognized that in a democratic society the individual is the main value to be protected by legal regulations. Protection of the environment is not the aim in itself and it is needed as much as the needs of individual and society ecological protection require,⁴³ i.e. environmental protection is based on protecting human beings and future generations. Such ideology is also grounded in

⁴¹ Jean Pradel, *Lyginamoji baudžiamoji teisė* (Comparative criminal law) (Vilnius: Eugrimas, 2001), p. 542.

⁴² Viktoras Justickis, *Kriminologija* (Criminology), 1st Part (Vilnius, 2001), p. 100.

⁴³ Petras Selilionis, "Lietuvos ekologinės teisės paskirtį atspindinčių teisinių kategorijų tapatumo paieška teorijoje bei praktikoje" (The Identity Search of Legal Categories which Reflect the Purpose of Lithuania's Ecological Law in Theory and Practice), *Jurisprudencija* 81 (2006): 85-90.

sustainable development aims that dominate in the world, as were analysed earlier in the article.

The environmental legal doctrine traditionally states that objects of an ecological legal offence are legal values protected by law, among them the environment as such – as entirety or as separate parts (components) – land, water, plants and animals, bio variety and etc., ecological safety of society and territories, ecological order, life and health of individuals and property.⁴⁴ In other words, traditionally the object of environmental offence is the environment (separating it from property and public health or human rights to clean and healthy environment), also social relations in the environmental sphere, use of environmental resources, ecological safety and separate environmental components, while in the authors' opinion it is already archaic and does not reflect the current realities.

As we have already mentioned, the object of environmental law is extended and orientated to the individual as the main value, and the object should be supplemented by the category of sustainable development. It means that the object of ecological legal offence becomes the life and health of a human being, biological safety, welfare of future generations and, of course, harmonization of ecology protection, economical and social aims.

One must say that evolution in understanding the object of the ecological legal offence and orientation to an individual and ideology of the sustainable development presuppose the increase by degree of the gravity for the environmental offences done by the legal entities.

Legal entities engaged in business often endanger the environment, environmental resources and their usage rules.

The need to apply criminal sanctions for certain environmental infringements determines the fact that some of those offences are very dangerous to human health, biological nature and cause great damage to the environment, for example, destroying or illegally acquiring natural resources.⁴⁵

One of the main reasons is determining the need to criminalize illegal actions of legal entities in the environmental sphere is inefficiency of a civil liability institute, the main aim of which is compensation of the damages, while trying to achieve the main environmental policy principles and the aims of the sustainable development. It is acknowledged that in the worldwide globalisation processes where a merging of multimillion capital companies is taking place, it is not enough to provide only civil legal damages compensation regulating mechanism, especially

⁴⁴ O. L. Dubovik, *Ekologicheskoe pravo* (Ecological law) (Moskva: Izdatelstvo eksmo, 2005), p. 78 [in Russian].

⁴⁵ Antanas Marcijonas and Bronius Sudavičius, *supra* note 4, p. 260.

when it is intended to protect consumer interests and not to allow monopolising of national markets, protect environment from pollution and etc.⁴⁶

Both in economic and legal scientific literature there is expressed an opinion that civil law is not sufficient and not identical instrument, which could prevent persons from making environmental offences, while criminal law, on the other hand, could protect environmental values and interests.⁴⁷

The aims of sustainable development determine the importance of prevention principle in the environmental protection policy, which presupposes the significance of the criminal liability institute for a legal entity in the environmental protection. It is accepted worldwide that application of a criminal law for the offenders makes appropriate influence to the others, potentially tending to offend. In other words institution of criminal prohibitions is aimed to avoiding crimes.⁴⁸ Fearsome effect could be reached by criminal but not by compensatory sanctions.⁴⁹

So one of the substantial reasons for determining the institution of criminal liability to the legal entities for offences related to violation of environmental protection requirements, is the fact that the application of criminal liability institute makes background to having influence on the business of the legal entities while aiming to implement the basic goal – the environmental protection policy principle – and also the aim of sustainable development.

One should mention that although the application of criminal liability to legal entities for environmental offences helps to reach the main aims of environmental protection policy and implements fundamental environmental principles, one of the most important and complicated questions becomes the efficiency of the criminal institute while implementing the aims of the sustainable development. It is important to find out if the application of criminal liability to the legal entities for environmental crimes is really the best tool to determine the behaviour of legal entities and secure observation of environmental protection requirements and implementation of the sustainable development goals.

While evaluating the efficiency of criminal instruments in the environmental protection policy one must, first of all, take into account the fact that offences in the environmental sphere are different from other crimes, because those offences

⁴⁶ Vytautas Šulija and Gintautas Šulija, "Juridinių asmenų baudžiamosios atsakomybės samprata ir taikymo problemos Lietuvoje" (Notion of criminal liability of legal entities and problems of application in Lithuania), *Jurisprudencija* 41 (33) (2003): 91-105.

⁴⁷ Michael G. Faure and Marjolein Visser, "Law and Economics of Environmental Crime: a Survey," (May 2003) // http://www.hertig.ethz.ch/LE_2004_files/Papers/Faure_Environmental_Crime.pdf (accessed January 13, 2009).

⁴⁸ Armanas Abramavičius and Alfonsas Čepas, *Baudžiamoji teisė* (Criminal Law) (Vilnius: Eugrimas, 1998), p. 25.

⁴⁹ Vytautas Šulija and Gintautas Šulija, *supra* note 46: 91-105.

are closely connected with business interests,⁵⁰ i. e. often they are made while doing socially useful activities (for example, in many cases pollution of environment is not illegal *per se*).⁵¹ Activities of the legal entities are basically useful to a state and its inhabitants, "that's why for optimal intimidating purposes one must evaluate benefit obtained from legal offence, likelihood that a legal offence will be detected, economic status of the offender and other factors."⁵²

It is stated in the legal and economic literature that criminal liability for the environmental offences is like a stinger in a business development. Especially because small companies more often become the object of criminal prosecution, this is not the case with big refined corporations.⁵³ It is the opinion that "even for those companies which are not prosecuted, permanent threat of "draconian" sanctions raise big emotional stress in many business fields."⁵⁴ In other words legal entities, being afraid of strict criminal sanctions, often take too big means of precaution, environmental goal bringing above economic and social aims.

But the goal of sustainable development is not only the protection of the environment. The ideology promotes harmonization of environmental goals with the other, not less important economic and social aims. So from that perspective criminal liability institute for the legal entities in the environmental sphere because of its strict character and possible heavy consequences may be inefficient while trying to harmonize three different and contradicting aims with one another. Prosecuting a legal entity for environmental crimes increases the threat to economic and social aims; i. e. the aim of environmental protection may shade two other goals - economic and social goals. Such a situation presupposes that criminal liability for the legal entities in the environmental sphere may take a dysfunctional tone.

Limited efficiency of criminal liability institute in the environmental sphere applied for legal entities while implementing the aims of sustainable development is determined by the shortcomings of that institute. The main of which is inflexibility of that institute and high expenses of practical application of the institute. The application of criminal liability for the legal entities of environmental offences (as for the other crimes either) is regulated by criminal procedure norms, the complexity of which and the abundance of which do not allow flexibly and prompt

⁵⁰ Edwin J. Tomko and Peter K. Wahl, "Criminal Liability Concerns to the Environmental Professional – I Should Have Known Better" // <http://www.akingump.com/docs/publication/391.pdf> (accessed January 17, 2009).

⁵¹ Jonathan M. Karpoff, John R. Lott Jr., and Eric W. Wehrly, "The Reputational Penalties for Environmental Violations: Empirical Evidence," *Journal of Law and Economics* [Forthcoming] // <http://ssrn.com/abstract=747824> (accessed February 2, 2009).

⁵² Vytautas Šulija and Gintautas Šulija, *supra* note 46: 91-105.

⁵³ Kathleen Brickley, "Environmental Crime at the Crossroads: The Intersection of Environmental and Criminal Law Theory," 71 *Tul. L. Rev.* 487 (Dec. 1996): 490-491.

⁵⁴ J. C. Coffee, "Does Unlawful mean Criminal?: Reflections on the Disappearing Tort/Crime Distinction in American Law," *Boston University Law Review* (1991): 219-220.

flexible reaction to offences against the environment, which presupposes that legal entities which have violated norms of environmental protection may remain unpunished. The fact that legal entities may be unpunished for environmental offences because of inefficiency (slowness) of criminal liability, does not allow harmonization of environmental, economic and social goals, i. e. implementation of the main mission of sustainable development, because in such a case the environmental aims are shaded by other, namely, economic and social aims.

The slowness of environmental criminal liability for legal entities is not the only problem of inefficiency of that institute. Not less important is the fact that application of criminal sanctions is more expensive to the state than the usage of administrative sanctions.⁵⁵

Furthermore, criminal liability as a most severe kind of legal liability should be applied only in exceptional cases, when the crimes in the environmental sphere are really heavy and make great damage to the environment. At the same time implementation of the goals of sustainable development requires permanent and continuous control and coordination of economic, social and environmental aims.

Although it is stated that application of criminal liability for legal entities is socially requested only very rarely,⁵⁶ in order to estimate in what concrete cases the application of criminal liability is mostly socially required, one must evaluate the benefits of criminal liability while applied to legal entities and the fact that goals may be reached while applying other branches of legal liability or prevention measures for possible environmental offences.

CONCLUSIONS

One of the measures able to ensure the implementation of sustainable development aims is the institute of the legal entities legal liability in the environmental sphere and its effective application. In Lithuania three sorts of legal entities legal liability can be applied – civil, criminal and administrative liability.

Potentially effective kinds of legal liability in the environmental sphere, evaluated from the prospect of the implementation of sustainable development aims, are legal entities of administrative liability in the environmental sphere. Legal entities violating the norms of the environmental law set economic aim above social and environmental aims, hence legal entities also encroach at sustainable

⁵⁵ Mark A. Cohen, "Monitoring and Enforcement of Environmental Policy," *International Yearbook of Environmental and Resource Economics* 3 (1999) // <http://sitemason.vanderbilt.edu/files/dbRqyQ/monitoring%20and%20enforcement%20working%20paper1.pdf> (accessed January 13, 2009).

⁵⁶ Vikramaditya S. Khanna, "Corporate Criminal Liability: What Purpose Does it Serve?" *Harvard Law Review* Vol. 109, No. 7 (1996): 1447 // http://papers.ssrn.com/sol3/papers.cfm?abstract_id=803867 (accessed February 17, 2009).

development and do not let striving towards combinability of environmental, economic and social society aims. This circumstance presupposes the demand to supplement the conception of the object of environmental law violation by both human health and life and sustainable development category.

Administrative sanctions being of repressive and not of compensational character preventively act on legal entities and do not let them unduly concentrate on economic aim, denying the environmental and social society aims. The character of administrative sanctions applicable to legal entities determines the fact that their application does not blanket socially and economically positive activity of legal entities.

Other potentially effective kinds of legal liability in the environmental sphere, evaluating from the prospect implementing sustainable development aims, is legal entities' criminal liability in the environmental sphere. The need to apply criminal sanctions for certain environmental infringements determines the fact that some of those offences are very dangerous to human health, biological nature and cause big damage to the environment, for example, destroying or illegally acquiring natural resources.

One of the main reasons to determine the need to criminalize illegal actions of legal entities in the environmental sphere is the inefficiency of the civil liability institute, the main aim of which is compensation of damages, while trying to achieve the main environmental policy principles and the aims of sustainable development.

The efficiency of criminal liability institute in the environmental protection sphere, while endeavouring to the aims of sustainable development, cannot be evaluated separately from other branches of legal responsibility. In cases when the heaviest environmental crimes are done, the criminal liability for legal entities may be the only socially based liability.

In order to answer the question if administrative or criminal liability should be applied to the legal entities for the offences against environment, we should look to the nature and purposes of administrative and criminal law, because both branches of law try to solve social problems existing in a society while applying sanctions. Also, in answering the question to which liability – criminal or administrative – a legislator should render priority protecting environment from illegal actions of the legal entities, we need, first of all, to analyse the object of environmental law.

The conclusion may be that while evaluating the efficiency of a legal entity's legal liability in the context of the sustainable development one should use a systemic approach, fixing criminal liability only for the violations of vitally important

interests, which would allow more successful implementation of prevention function.

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