

Consultative Council of European Prosecutors Opinion No. 17 (2022) on the role of prosecutors in the protection of the environment^[1]

^[1] Publicada originalmente em
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I. INTRODUCTION: PURPOSE AND SCOPE OF THE OPINION

1. In accordance with the mandate given to it by the Committee of Ministers, the Consultative Council of European Prosecutors (CCPE) decided to produce the present Opinion on the role of prosecutors in the protection of the environment. The CCPE is conscious of the need to enhance responses to environmental crimes and related infringements, and as such to contribute to strategies for protecting the environment, public health and safety, and upholding individuals' right to a clean, healthy and sustainable environment^[1]. This topic was selected by the CCPE plenary meeting with a view to highlighting the important role that can and should be played by prosecutors in protecting the environment, notably when pursuing the cause of justice, serving the public interest, creating an effective deterrence through prosecutions and enhancing respect for the law.

^[1] A/HRC/RES/48/13 – UN Human Rights Council, Resolution 48/13 adopted on 8 October 2021, “The human right to a clean, healthy

and sustainable environment”, and UN General Assembly’s adoption on 28 July 2022 of Resolution 76/300 which also recognises the right to a clean,

healthy and sustainable environment as a human right, and calls to scale up efforts to ensure such environment for all.

2. Environmental crimes and related infringements are a growing source of global concern and a pressing threat to individuals and society. They often have long-lasting and irreversible effects, including a global reach and impact on both existing and future generations, which may affect and involve different states and justice systems. It is equally important that such crimes can undermine the rule of law, good governance and fuel geopolitical conflicts. In this context, prosecutors' increased and sustained attention to environmental crimes and enforcement is essential to strengthen the rule of law that environmental governance is based on, and to set benchmarks and values in this respect.
3. Globalisation and enhanced cross-border trade, while bringing financial, economic, social and other benefits, also opened the door to evolving criminality, especially to environmental crimes and related infringements. Environmental crimes are widely recognised as among some of the most profitable forms of transnational criminal activity. Such crimes frequently converge with other serious crimes, such as human and drug trafficking, counterfeiting, cybercrime and corruption. Furthermore, proceedings relating to environmental crimes can often be complex, as these crimes can be perpetrated by a range of actors, from individuals, companies and corporations, corrupt officials, organised criminal networks or a combination of all of these actors. This, in turn, presents specific challenges for prosecutors that requires not only in-depth practical knowledge, capacities and capabilities, but also innovative collaborative approaches and strong aspiration to solve challenges and thwart environmental crime.
4. The present Opinion draws on the experience and approaches taken by prosecutors in Council of Europe member States, considering their role in the protection of the environment and

their competences, with due consideration to the variety of legal systems. The Opinion also takes into account other major differences which impact on their experience, namely the differences in the type of environmental crimes they are faced with, their different organisational approaches, and that, under domestic law, environmental crimes and infringements may be considered and treated differently.

5. The Opinion identifies and describes the conduct, expected from prosecutors in the prevention, detection, investigation and prosecution of environmental crimes. Such crimes are usually complex, committed in a sophisticated and well-organised manner, secretive in nature, and require a multidisciplinary approach.
6. The Opinion aims to serve as a reference tool for prosecutors in combating environmental crime and protecting the environment.
7. The Opinion takes note of the need to review periodically existing legal instruments and mechanisms to sanction and remedy environmental crimes and related infringements whether through criminal, administrative or civil law, in respect of both natural and legal persons. The regular review of links between environmental crimes and other serious crimes, notably organised crime and corruption, as well as crimes committed in the context of armed conflicts through means of warfare and of the availability of adequate tools and channels for national inter-agency and international co-operation are also critical.
8. Member States tackle environmental crimes and related infringements through criminal, administrative and civil law. Criminal law is usually resorted to in response to more serious violations presenting a higher degree of danger and a corresponding higher level of social disapproval and condemnation. Although the legal systems and approaches to similar issues