ENVIRONMENTAL CRIMINAL LAW IN THE FEDERAL REPUBLIC OF GERMANY WITH REGARD TO THE SITUATION IN THE NETHERLANDS

Cornélie Waling
Dr Günter Heine

Protecting the environment by means of criminal law is an issue growing throughout the world – numerous countries have introduced appropriate penal provisions or are pursuing reformatory plans in this direction. In the light of this international trend to penalize, we should not neglect the fact that only a short time after penal provisions had come into force, the need for further reforms was voiced. In some cases amendments were made repeatedly, there has even been a call for a reform of the reform. Since severe environmental crimes have now also been embodied in the Dutch Criminal Code, it seems of use to examine both the roles and functions of West German criminal law for in Germany important provisions dealing with environmental protection were incorporated in the general penal code as early as 1980. In the eight years that have since passed, case law and penology have dealt with these anti-pollution regulations quite intensively. Empirical studies conducted in this connection also allow us to make an assessment of penal environmental protection. To start with, we will describe the central criminal laws reflected in the current opinion (I). Since the interrelation between criminal law and administrative law has not yet been examined closely in The Netherlands, the debate carried on in West Germany will be considered more comprehensively (II). Whether and to what extent current environmental criminal law has proved successful is a question to be answered not in the least by the empirical studies conducted in this connection (III). The study will be concluded by a comparative analysis of the situation in neighbouring countries (IV).

I. Central Environmental Criminal Laws

1. History and Penal-Political objectives

Until 1980, penal environmental protection was widely scattered, governed mainly by supplementary statutes which, above all, penalized violations of administrative regulations. Several aspects were responsible for the reform of the environmental criminal law: as early as 1971, the social democratic-liberal government coalition stressed the necessity to 'combat polluting activities by imposing adequate penal measures'. For the social danger of environmental pollution is in no way second to the danger of the classical detriment to the objects of legal protection. It was, however, obviously not enough to merely modify special administrative laws by, e.g., dispensing with the requirement of 'harmful' water pollution to be able to react penally and adequately to the environmental scandals of the 70's. In spite of the fact that secondary penal provisions governing environmental protection were modified from offences requiring concrete endangering to abstract dangerous offences, experts considered environmental criminal law far too inefficient, stating that, in particular, administrative deficiencies in the implementation, i.e., the fact that laws were applied either incompletely or contrary to their intention, were having an unfavourable effect on the application of penal provisions. The picture of environmental crime drawn by the empirical studies was one dominated by easy-to-detect petty offences and typified by a high proportion of dismissals of criminal proceedings. In the late 70's, small-scale traders and farmers proved to be the typical environmental offenders. As the penal instruments ran idle with regard to severe environmental crimes, the logical step for the legislature was to meet the demand for improved penal environmental protection by enacting the 1980 Law on Environmental Protection. The penal-political aim of the reform (18th StrÄG) was to 'counter severe ecological danger and damage more effectively than before by introducing a comprehensive catalogue of penal sanctions'. Unlike the Dutch legislature, German lawmakers expected the embodiment of penal laws in the Penal Code and the acknowledgement of environmental media such as water, air and soil as rather independent legal goods to sharpen the general public's consciousness of the social harmfulness of pollution. To also cover the peculiarities of ecological disturbances such as cumulative effects and, consequently, causation problems, offences of merely abstract endangering were chosen technically. Unlike The Netherlands, Germany did not conceptualize environmental penal laws in terms of crimes constituting a public danger, rather, they established the urge to criminalize preliminarily, i.e., in the 'run-up' to public health risks or danger to life. In this respect, the Federal Republic of Germany holds an internationally leading position – which, as will show, brings about all the advantages and disadvantages of such an expansion of penal law. By enacting the 18th StrÄG, the German legislature did not choose an independent penal solution, but closely linked the elements of offences and the existing provisions of Environmental Administrative Law together. The hopes placed in the reform were extremely high.
sensational 'effects' were expected and a clear 'start-finish-victory' predicted.\(^{10}\)

2. Penal Laws mirrored by prevalent opinion

a) Water protection

§ 324 StGB (German Penal Code), the central provision dealing with water protection, is conceptualized very comprehensively. Addressing everybody, it merely requires unauthorized pollution or other damaging modifications of the properties of water. By broadening the range of criminalization, case law has adjusted this article on water protection to practical needs. Taken the ecological perspective as a basis, it provides that an alteration of the physical, chemical and biological status quo of a body of water at the risk of a material disadvantage is sufficient.\(^{11}\) Hence it is of no relevance whether a discharge has caused any damage or risks, the mere fact that a body of water is polluted constitutes an offence. An activity is already deemed criminal if polluted water is contaminated even further, i.e., if discharges which are otherwise quite harmless and substances already contained in the water react together and impair the quality of the water.\(^{12}\) This provision, however, does not cover petty offences such as the causing of a minor cloudiness of water by sand or mud.\(^{13}\)

Focusing on case law we note that a severe liability in negligence corresponds to this wide interpretation of the term 'pollution' which is intended to guarantee penal water protection of a comprehensive nature: in this context, the fact that environmental criminal law has created original new duties of care for everyone shall apply.\(^{14}\) Even though such an interpretation tremendously strengthens the influence Penal Law has in all cases of operational accidents of ecological impact, it is, to a large extent, up to the criminal judge to define which duties of care have been newly created. However, we note that, on the other hand, both the contents and qualities of these new duties are still to be defined. In so far, a specific problem of environmental protection has been fathomed by criminal law. As opposed to, e.g., road traffic, the assessment of dangerous polluting activities still lacks standards which are sufficiently established.\(^{15}\)

In this respect, the current interpretation of § 324 StGB exceeds the former Art. 173a Dutch Penal Code by a long way: according to the latter, a disadvantage to others resulting from the normal utilization was a prerequisite, whereas, in Germany, the possibility that a material disadvantage might result suffices. However, certain parallels can be established with Art. 329 IV Dutch Penal Code, according to which illegal discharges into surface waters of any substances which, in connection with the normal use of these waters might have damaging consequences constitute criminal offences. These provisions are complemented by the Law on Pollution of Surface Waters which prohibits discharging without consent into surface waters any wastes, polluting or damaging substances. However, a similar dependence on administrative law is also to be found in Germany with regard to the classification of polluting activities in terms of 'legal' or 'illegal' (so-called Rechtswidrigkeit): water pollution is exempted from punishment if the offender is acting under consent or licence. This field of tension between criminal law and administrative law creates a great number of practical problems, one being the so-called control standards. These limits, fixed within the scope of consents for discharges into waters, are considered to have been observed if the arithmetical mean of five consecutive measurements does not exceed the corresponding control standards. In parts, the penal relevance of these limits is questioned.\(^{16}\) As a consequence, penal water protection in connection with operating activities which, in this context, particularly concerns pollution likely to cause damage, is in danger of running idle to a great extent. Moreover, the question of whether the fact that certain discharges normally requiring a licence are tolerated by the authorities puts them on a par with legalization is still unsettled. Basically, such toleration by the administrative authorities is not considered to be operative as a justification. However, in certain circumstances, more recent judgment tend to put it on a level with an official consent.\(^{17}\) Yet the fact that in Germany the early commencement of, e.g., the use of a body of water in certain cases has been regulated by law is quite often neglected. Beyond such special arrangements there is no room for implementing the law extra legem. Attempts of that kind amount to a negation of the constitutionally established priority of the law in the guise of a liberal pragmatism. Moreover, criminal law would only support the deficiencies in the implementation of administrative law.

b) Criminalization of air pollution and noise nuisances

Unlike water protection, penal air protection (§ 325.1 StGB) is restricted considerably: causing alterations in the natural composition of the air in a certain manner does not yet constitute a crime rather, the polluting activity must be likely to impair the health of another, animals, plants or the significantly valuable property of another. Such specific risks, moreover, constitute criminal offences only if, by his gross misconduct, a person violates individual administrative regulations such as specific limits. This provision applies only to air pollution caused in the operation of an installation.

Par. 325.1.2 StGB covering noise nuisances, is conceptualized...
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in a similarly punctual manner, referring, moreover, only to the qualification as a health risk.

In the Netherlands, corresponding protective elements were, until recently, to be found exclusively in special administrative laws such as the Law Against Air Pollution and the Law Against Noise Nuisances. Criminal liability is strictly dependent on administrative orders. Provided that the standards set are adequate, this kind of penal protection might be more effective than the 'likability clauses' set forth in German law. Although (as opposed to concrete prerequisites) the German legislature intended these clauses to facilitate the proof of causation, the problems which arise in part as intricate as those accompanying the determination of causation in connection with violations or concrete hazards. There are deficits regarding the most basic requirements, i.e., sound theoretical knowledge and practical experience(5) are lacking as concerns the general dangerousness of polluting activities. This is especially the case with the classification of noise nuisances. It is not possible to fix any scientific noise levels, possibly there is also a lack of criteria for the valuation of polluting activities which can be operationalized. The mere fact that certain limits fixed by the administrative authorities have been exceeded does not constitute a crime. However, it is possible to consider it an indication of a potentially dangerous act. (6)

c) Waste disposal which endangers the environment

§ 326 StGB incriminates unauthorized waste disposal, referring, i.a., to poisonous and explosive wastes and to wastes which, on account of their nature, composition or quantity are likely to pollute or cause long-lasting adverse effects on a body of water, the air or the soil. This even includes household waste to the extent that, e.g., large quantities are disposed of on a dumping ground. (7) On the other hand, efforts were made not to penalize minor polluting activities. E.g., setting fire to an automobile in order to dispose of it does not yet constitute an act likely to cause damage. (8) The differentiation between (centrally criminalized) waste disposal and the treatment of wastes as dangerous economic goods (to be sanctioned at the most under special laws) is an issue yet to be settled satisfactorily. For as long as further processing, however vague, of a dangerous substance can be expected somehow or other, the waste concerned does not fall under § 326 StGB. (9)

d) Protection from special dangerous potentials

Governing the unauthorized operation of a dangerous installation and unauthorized dealings in atomic fuel, §§ 327, 328 StGB penalize activities which might impair the environment or endanger the life or limb of others (offences requiring merely an abstract endangering instead of a specific damage). Indirectly, the general public's interest in supervising the controlled handling of special dangerous potentials is also protected. In parts, this protective intent is also reflected by the case law, Penal law, in this connection, obviously holds a stronger position than administrative law. Only recently, the German District Court Hanau ruled that the handling of atomic fuel (§ 328.1 StGB) is to be deemed unauthorized if the authorities, instead of adhering to the licence procedure which guarantees those potentially affected an extensive participa-
tion, have merely issued a so-called preliminary consent. (10) In this context, in order to protect both human life and ecological interests, one of the functions of criminal law is to guarantee that these important procedural rules are observed.

e) Aggravated endangering of the environment

The West German legislature has set forth two elements of environmental crimes of a particularly serious nature (§ 330 et seq. StGB) which, on the one hand, include genuine qualifications pursuant to § 324, 329 StGB, containing, on the other hand, also new basic elements. § 330 StGB (aggravated endangering of the environment) clearly defines the requisite hazards (to the life or limb of significantly valuable property of another et.) and aggravated endangering of the environment such as serious water pollution which so adversely affects the quality of water that 'for a considerable period of time it could no longer be used as it had been before'. Everything which can possibly be considered an aggravated environmental hazard has been packed into this monstrous provision (unprecedented in criminal law). Even if the requisite serious consequences should actually occur, they are legalized to a high extent on account of the fact that there is an administrative component (administrative permissions etc.). This, however, does not apply to the intentional release of poisons in the environment (§ 330a StGB). In the light of the special danger of perilous poisons and the fact that the minimum degree of danger required is the risk of aggravated bodily harm, this provision was conceptualized in a manner technically independent of administrative regulations to the effect that administrative consents cannot have a legalizing effect. (11)

f) Other provisions governing environmental crime (survey)

Apart from the above-described Section 28 StGB, Section 27 StGB which covers crimes endangering the public contains provisions which govern the protection against harmful effects on the environment and in particular the protection against ionizing radiation. In parts, concrete danger to the life or limb of another person or the significantly valuable property of another is a prerequisite: this applies to crimes of causing an atomic explosion (§ 310b StGB) or detonating explosives (§ 311 StGB) as well as to the construction of defective nuclear en-

(5) In parts, there are demands for a general (legal-scientific) acknowledge-
ment (Rudolph, Neue Zeitschrift für Strafrecht 1984, p. 250, for criticisms see Heine, in Escher/Kaiser (Eds.), Dritte deutsche-sowjetische Kolloquium, 1981, p. 85, see, however, also Klein/Coass, Kausalitätsprobleme in Umweltstrafrecht, 1986, IV.).

(6) See Heine/Meinberg (annotation 5), § II D.

(7) With regard to the potential harmfulness of air pollution, this applies espe-
cially to the 'Technische Anleitung zur Reinigung der Luft' dated Feb. 27, 1956, Gemeinwesens Ministerialblatt, p. 95. For details see Rudolph, Neue Zeitschrift für Strafrecht 1984 from p. 249.


(9) Amtsgericht Hamburg, judicial decision dated June 12, 1988, 118 Ds 400 Js 317/85.

(10) Lencker, in Schönke/Schröder (Anmerkung 11), § 322.2, see also Oberverwaltungsgericht Koblenz, Neue Zeitschrift für Verwaltungsrecht 1985, p. 436.

(11) With further reference to § 329 Strafgesetzbuch (Endangering areas in need of protection).


(13) See, e.g., Cramer, in Schönke/Schröder, Strafgesetzbuch, § 330.0.0, for criticisms see Betts, Juristische Schrifttum 1986, p. 541.
ergy installations (§ 311e StGB). Moreover, in an effort to render criminal law more effective, 'liability clauses' were used instead of concrete endangering. In parts, the range of criminalization was broadened to the extent that certain activities already constitute criminal offences: e.g., intentionally exposing another to ionizing radiation which is likely to impair this person's health constitutes a crime (§ 311a StGB). Moreover, releasing ionizing radiation which is likely to cause specific damage constitutes an offence only if the offender, by his gross misconduct, has violated administrative regulations or acts (§ 311d StGB). Thirdly, (in view of the highly dangerous potential in case of success) the preparation of explosion or radiation offences is also covered (§ 311b StGB). These provisions which govern crimes endangering the public provide that increased punishment shall be imposed (as a rule, 10 years' imprisonment or life sentence) for crimes of an extremely serious nature (if, e.g., the death of a person has been caused recklessly).

II. Relationship between criminal law and administrative law

Contrary to the situation in The Netherlands, the intertwine-ment of penal provisions with administrative law in West Germany has created a field of tension some people define as 'civil warlike' conflicts. Indeed, not only the literature on this issue is characterized more and more by polarized views. According to reports given by practitioners there are dissonances between the prosecutorial agencies and the executive administrative authorities. This might result from the fact that two matters meet which are typified by diverging selfconceptualizations. Criminal law is bound to clearly-defined crimes, rooted to a conditional point of view and flanked by formal (official) preliminary proceedings which are committed to the principle of legality. Moreover, it inevitably operates retrospectively. In contrast to this, administrative law has conceptualized the reactions to deviant behavior rather flexibly. As a rule, prospects for the future are of prime importance. On the basis of the principles of cooperation and opportunity, these reactions can be of a dynamic and individual-protective nature. Hence penal reactions run the risk of grasping at thin air at all events, especially if there is an administrative component - not only because (due to deficiencies in the implementation) either administrative acts required by administrative law remain undone or the gray zone of informal agreements is touched, but also because possibly administrative acts are issued which do not contain any criteria for implementing criminal law.

According to current opinion, criminal laws and administrative categories tend to form a unit. Hence the decisive question is whether a consent has been issued and not whether it could have been issued. Accordingly, the operation of an installation is deemed unauthorized if the requisite application has not been filed, even if an administrative consent would have been issued if one had been applied for. Moreover, according to administrative principles, a distinction is made between the validity and invalidity of an administrative act: the validity of an administrative act is decisive in cases of prohibitions, orders, conditions and the like. An administrative act which is illegal but not invalid has to be complied with by those addressed either as soon as it becomes absolute or on account of compulsory immediate enforcement. In cases of privileging administrative acts such as consents, res judicata is also the basic decisive factor, not the substantive correctness. Invalid administrative acts, i.e., those which are seriously and obviously irregular, are to be left out of account by criminal law. On the other hand, according to current opinion, an irregular but final consent cannot be relied on in the case of abuse of a merely formal position, e.g., if a consent which should not have been issued was obtained by false pretenses, threat, bribery and the like. This also applies to consents which are 'obviously outdated'. Violating an administrative act also constitutes a crime if the act is subsequently (recognized as illegal and) annulled. In such cases, grounds for quashing a sentence are increasingly being accepted.

Only recently, the Federal Constitutional Court had to decide the constitutionality of such administrative components. The Municipal Court Nördlingen complained that the principle of the separation of powers was disregarded and that, moreover, the principles of certainty and equality were violated. The Federal Constitutional Court, however, confirmed the constitutionality and made clear that the legislature, faced both with a complex field to be regulated and with new forms of crimes is permitted to set up criminal laws which, conceptualized in a flexible manner, might take into account the changing conditions. Referring to the fact that, depending on the persons addressed (e.g., those operating a dangerous installation), the legal system demands an increased knowledge of duties, it countered the rather overdrawn demands on the principle of certainty. Moreover, it stated that the penal provisions dealing with error guarantee adequate solutions. The discussion currently held in Germany on the criminal liability for misdemeanors committed by office-holders in connection with environmental crimes is closely linked with these legal-theoretical questions regarding the administrative component. The question is whether employees of environmental enforcement agencies incur a penalty for polluting the environment by issuing a faulty consent or failing to take the action

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28) For details see Heine/Meinberg (annotation 8), § 4 II C.
29) Regarding the current opinion see Heine/Meinberg (annotation 5) § 3 III.
30) See the overview by Cramer, in Schönherr/Schröder (annotation 11), Preliminary remark 15 before §§ 254 et seq.
32) See also the evidence by Heine/Meinberg (annotation 6), § 3 III.
33) Bundesverwaltungsgericht, Umwelt- und Planungsrecht 1988, p. 18 et seq. Concretely, this concerned § 327 2-1 Strafgesetzbuch which sanctions the operation of an installation requiring a permit without the authorization or in violation of an exécutoy prohibition.
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required, e.g., in cases of water pollution or other environmental crimes. The parliament refrained from creating a special crime particularly since it did not want to solve conflicts of consideration primarily by means of criminal law. It is true that in the 1980 legislative phase the parliament proceeded on the assumption that it might be possible to cover serious cases by general principles (failure to discharge a legal duty, aiding and abetting, Nebenläuferhaft). Although, during the eight years that have passed since the law entered into force, investigations against official decision-making administrative persons were instituted quite often, to date not a single final conviction for violation of § 324 et seq. StGB has become known. Indeed, the criminal liability of office-holders is limited not only because those provisions of criminal law dealing with environmental crimes contain numerous special elements of crimes to the effect that, from the very beginning, government officials are not eligible as offenders. Moreover, the relevant regulations implementing the environmental administrative laws normally leave the office-holders a scope for decision and judgment, and a penal review merely has limited access to.

Therefore office-holders might be liable to punishment de lege lata only in cases of gross infringements of environmental administrative laws.

III. Empirical findings

Between 1973 and 1986, the number of police-recorded environmental crimes increased by 540%. A slight increase cannot be noted already before 1980, the period when supplementary environmental penal provisions outside criminal law were in force. Between 1980 and 1983 there was a considerable increase, followed by a precipitous rise starting in 1984. Water pollution has always represented the greater part, the proportion of which, however, has been decreasing in favor of waste offences. This dominance of water pollution is connected with the fact that § 324 StGB is virtually conceptualized to cover petty offences; the cases concerned are therefore easy to detect (discoloration of waters). At this level, § 325 StGB, on the other hand, already runs idle, as do §§ 330 et seq. StGB. In this connection, the increase in police-recorded environmental crimes seems to result from a quantitative rather than from a qualitative effect. Similar to the period before 1980, the offences recorded are primarily of a minor nature involving the private and occupational sector. The fact that a high proportion of privately initiated proceedings is running parallel to a very restrictive reporting practice of the environmental administrative authorities gives rise to the assumption that the dark field is covered only one-sidedly. However, improvements made in the organizational structures of the enforcement police have changed the situation to some extent. Yet we can still not speak of a uniform and adequate coverage of environmental crime despite the fact that the control density has increased. At public prosecutor level the central feature is an unusually high proportion of dismissals for lack of sufficient evidence. However, a high proportion of environmental proceedings, the investigations of which have been successful, is dismissed on the ground of insignificance (§ 153.1; § 153a.1 StPO). If dismissals by the public prosecutor prove to be the standard form of handling environmental crimes, technical problems regarding the tendering of evidence and difficulties concerning the determination of the persons responsible are probably one factor. Moreover, within the framework of organizational connections such as artificial persons or corporations it is not possible to attribute misguided behavior internally without difficulty (criminal liability of the enterprise as such is unknown in the Federal Republic of Germany). Concerning particularly the investigation of industrial environmental crimes, fathoming the limits or the corresponding administrative consents and standards is probably also of importance. Last but not least, the fact that substantive criminal law allows the coverage of petty offences is another important factor. In this respect, dismissals by the public prosecutor are indeed adequate solutions. From the West German angle, these findings are in no way satisfactory since, according to the structure of the Code of Criminal Procedure, terminations on the ground of insignificance are supposed to be an exception. Although we note that there has been an increase at court level, the course of development here as compared with police-recorded environmental crime has clearly been more moderate (convictions 1975: 1,011; 1986: 2,962, increase thus 193%). To this extent, the above-described tendency to filter out at investigation level has been confirmed. The fact that the structure of judicial decisions is continuously shifting away from convictions also deserves mention. In 1986, their proportion amounted to a mere 52%, whereas, in 1975, it had been 68%. Running parallel to this has been an ever-decreasing importance of acquittals, whereas dismissals of criminal proceedings, as a rule on the ground of insignificance, are increasingly developing into a main form of handling environmental cases also at court level. In 1985, their proportion already amounted to 40% of all judicial decisions. The fact that – if punishment is imposed at all – they range at the lower level of the statutory range of punishment almost without exception also fits into this picture. Fines were imposed in approximately 98% of all convictions, 2/3 ranging between 5 and 30 days fine.

To sum up it can be said that, as a rule, there is an actual risk of being convicted only in case there is no will for defence (motion against Strafbeschuldigt (order imposing punishment issued by the Amtsrichter at the request of the public prosecutor without previous trial) in proceedings in writing and in cases of crimes of a relatively simple nature related to the agricultural and

[14] Their proportion is estimated to amount to almost 50% of all proceedings.
[16] See Statistisches Bundesamt (Ed.), Strafverfolgungspotential 1975 and 1986. Trials not only include convictions or acquittals, but also dismissals.
[17] For details see Heine/Meineberg (annotation 5), § 6 f.
small-scale business sector. The high expectations of the West German parliament that it would be possible to prosecute and penalize particularly serious environmental crimes adequately have not been fulfilled satisfactorily.

IV. Comparative reflections

1. The courses taken by the Federal Republic of Germany and The Netherlands are quite different. West German lawmakers have set forth practically all the relevant provisions in a separate section of the German Penal Code. Even if the objective of the 1980 reform was to cover serious environmental crime better it seems that, as concerns especially water protection, the penal program is virtually conceptualized to prosecute minor pollution. Monstrous qualified crimes are supposed to guarantee that environmental crimes are sanctioned appropriately— which has, however, not come true as yet.

The Netherlands, on the other hand, have conceptualized penal protection double-tracked: supplementary penal statutes are primarily intended to secure environmental-administrative ordering, distributing and control activities. The provisions of the Penal Code governing environmental protection are aimed at protecting public safety and health. In this respect the Dutch legislature adheres to the classical structures of the general penal code by centrally penalizing the concrete danger to traditional object of legal protection as a type of crime endangering the public. The advantage arising out of the fact that the Penal Code dispenses with emphasizing the environment’s special worthiness of protection in a playcard-style manner is that the provisions of the supplementary criminal law can be conceptualized and implemented more adequately.44 Yet, in this connection, the basic question arises as to a possible break-up of penal legislation45— at the risk of the Penal Code losing its leading position. As for the rest, the international experiences have shown that, as a rule, classical offences requiring concrete endangering, faced with the rather difficult problems regarding the causation and the detection of polluting activities, grasp at thin air.46 In so far, it is only a penal-political consequence if The Netherlands attempt to improve penal protection by incorporating new potentially dangerous offences in the Penal Code.47 Unlike Austria which focuses on the risk of severe ecological damage,48 The Netherlands keep to the traditional point of view by protecting both public health and human life from danger. We should, however, not forget that, as concerns the harmfulness of substances, difficult problems regarding the determination still exist, even if, compared to Austria, a higher degree of certainty results— as German experiences concerning crimes likely to have certain effects show.49 To this extent it is necessary to relativize any overdrawn expectations placed in a reform from the very beginning— all the more so, since environmental protection is inevitably limited.

2. This is all the more so since parliament has closely linked the use of the environment and pollution to a net of administrative planning, distribution and ordering duties, which tend to assign criminal law a secondary protective function. From this point of view, the fact that even the most serious kinds of

44) By classifying environmental crimes pursuant to supplementary Criminal Law as economic crimes, The Netherlands have extended the prosecutorial authorities’ range of action and the range of possible sanctions (see Heine, Walling, Die Durchsetzung des Umweltstrafrechts in den Niederlanden, Juristische Rundschau 1988, in print).

45) As e.g., in Italy, see Heine/Catenacci, Zeitschrift für die gesamte Strafrechtswissenschaft 101 (1989), H. 1, p. 163 annotation 102.


47) See from Art. 173a and 173b Dutch Penal Code, provisions which, i.e., are intended to penalize the disposal of substances on the soil, in the air or in surface waters if the offender knows or has concrete reason to assume that as a result of the act, danger to public health or danger to the life of another is to be feared (Gesetz vom 19.1.1989, Stb. 1989, 7).


49) See only Heine/Meinberg, (annotation 5) § 3 II.

50) For a historical analysis see Heine, Goldmann’s Archiv für Strafrecht 1988, from p. 116.