

Legal regulations and sanctions related to the illegal dumping of waste in Polish environmental law²

Abstract

This paper concerns legal regulations and sanctions regarding the illegal dumping of waste in environmental law in Poland. First, introductory remarks are presented, including an outline of the status of Poland's implementation of EU instruments through national law. This section of the paper concludes with an overview of the basic legal acts that are applicable in Poland, to illustrate the legal spectrum of this topic (related administrative law norms and certain criminal and civil law rules). Second, considerations regarding permits for the transportation and processing of waste are discussed; this section includes relevant administrative provisions applicable in Poland. Third, legal regulations concerning administrative control are presented; in particular, this section pays special attention to control in the context of issuing permits as well as field inspections independent of this process. Fourth, civil liability is addressed. Fifth, provisions of criminal law are discussed, including penal code provisions, extra code provisions, and provisions related to administrative fines. Finally, the paper concludes with a concise summary.

Keywords: illegal dumping, waste, environmental law, criminal law, Poland

1. Introduction

Poland, as a Member State of the European Union (EU), is obliged to implement EU directives issued by EU institutions. Neither Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain

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Directives (Directive 2008/98/EC),³ nor Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (Directive 2018/851), are exceptions to this.⁴ In the case of both directives, Poland has adopted appropriate legal measures to transpose EU provisions in national law.

Concerning Directive 2008/98/EC, Poland introduced a number of legal acts aimed at amending the national law to comply with the EU standards envisaged in this secondary piece of EU legislation. In terms of the 12 December 2010 deadline set in Directive 2008/98/EC, Poland adopted the following national legal acts: (1) The Act of 11 May 2001 on Packaging and Packaging Waste;⁵ (2) Regulation of the Minister of the Environment of 9 July 2007 on the necessary scope of information covered by the obligation to collect and process, as well as the method of maintaining the central and voivodship database on waste generation and management;⁶ (3) The Act of 27 April 2001 – Environmental Protection Law;⁷ (4) Regulation of the Minister of the Environment of 4 November 2008 on the requirements for conducting measurements of emission levels and measurements of water intake volume;⁸ (5) Regulation of the Minister of the Environment of 8 December 2010 regarding the templates of documents used for waste records;⁹ (6) Regulation of the Minister of the Environment of 8 December 2010 on the scope of information and templates of forms used for the preparation and submission of aggregated sets of waste data;¹⁰ (7) The Act of 27 April 2001 on Waste;¹¹ (8) The Act of 1 July 2011, amending the Act on Maintaining Cleanliness and Order in Communes and Certain Other Acts;¹² (9) The Act of 24 November 2017, amending the Act on Waste Management and Certain Other Acts;¹³ (10) The Act of 19 July 2019, amending the Act on Maintaining Cleanliness and Order in Communes and Certain Other Acts.¹⁴

In relation to Directive 2018/851, Poland introduced a series of legislative instruments aimed at amending national law to comply with the requirements set out in the directive. In this legal act, the deadline for transposition was set for 5 July 2020. In this context, in Poland, as part of the implementation of EU law,

3 | Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008), 3–30.

4 | Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (OJ L 150, 14.6.2018), 109–140.

5 | Official publication: Journal of Laws; Number: 2001/63/638; Publication date: 2001-06-22.

6 | Official publication: Journal of Laws; Number: 2007/133/930; Publication date: 2007-07-24.

7 | Official publication: Journal of Laws; Number: 2008/25/150; Publication date: 2008-02-15.

8 | Official publication: Journal of Laws; Number: 2008/206/1291; Publication date: 2008-11-21.

9 | Official publication: Journal of Laws; Number: 2010/249/1673; Publication date: 2010-12-28.

10 | Official publication: Journal of Laws; Number: 2010/249/1674; Publication date: 2010-12-28.

11 | Official publication: Journal of Laws; Number: 2010/185/1243; Publication date: 2001-06-20.

12 | Official publication: Journal of Laws; Number: 2011/152/897; Publication date: 2011-07-25.

13 | Official publication: Journal of Laws; Number: 2017/2422; Publication date: 2017-12-22.

14 | Official publication: Journal of Laws; Number: 2017/2422; Publication date: 2019-08-22.

the following national legal acts were adopted: (1) Regulation of the Minister of Economy of 5 October 2015, regarding the detailed procedures for handling waste oils;¹⁵ (2) The Act of 11 May 2001, on the obligations of entrepreneurs in the field of management of certain waste and product fee;¹⁶ (3) The Act of 19 July 2019 on the prevention of food waste;¹⁷ (4) The Act of 14 December 2012 on waste (the Waste Act);¹⁸ (5) The Act of 13 June 2013 on packaging and packaging waste management;¹⁹ (6) The Act of 11 September 2015 on waste electrical and electronic equipment;²⁰ (7) The Act of 24 April 2009 on batteries and accumulators;²¹ (8) The Act of 20 January 2005 on the recycling of end-of-life vehicles;²² (9) The Act of 13 September 1996 on maintaining cleanliness and order in municipalities;²³ (10) Regulation of the Minister of Climate and Environment of 3 August 2021, on the method of calculating the levels of preparation for the reuse and recycling of municipal waste;²⁴ (11) The Act of 17 November 2021, amending the Act on Waste and certain other acts;²⁵ (12) Announcement of the Marshal of the Sejm of the Republic of Poland dated 14 October 2021, regarding the publication of the consolidated text of the Act – The Code of Offences;²⁶ (13) Announcement of the Marshal of the Sejm of the Republic of Poland dated 15 July 2020, regarding the publication of the consolidated text of the Act – The Penal Code (PC).²⁷

However, in the context of the titular issue and the aim of this paper, the most important legal acts are, first, the Waste Act, and second, the Act of 6 June 1997 – PC.²⁸ Both acts contain legal regulations relevant to outlining the appropriate legal framework concerning the illegal dumping of waste in environmental law in Poland. Civil liability is only briefly mentioned, with the most important related act being the Civil Code of 23 April 1964 (CC).²⁹ Together, these acts reflect the legal spectrum on this topic (i.e. related administrative law norms and certain criminal and civil law rules³⁰).

15 | Official publication: Journal of Laws; Number: 2015/1694; Publication date: 2015-10-23.

16 | Official publication: Journal of Laws; Number: 2018/1932; Publication date: 2018-10-09.

17 | Official publication: Journal of Laws; Number: 2019/1680; Publication date: 2019-09-03

18 | Official publication: Journal of Laws; Number: 2020/797; Publication date: 2013-01-08.

19 | Official publication: Journal of Laws; Number: 2020/1114; Publication date: 2013-08-06.

20 | Official publication: Journal of Laws; Number: 2019/1895; Publication date: 2015-10-23

21 | Official publication: Journal of Laws; Number: 2019/521; Publication date: 2009-05-28

22 | Official publication: Journal of Laws; Number: 2019/1610; Publication date: 2005-02-11.

23 | Official publication: Journal of Laws; Number: 2019/2010; Publication date: 1996-11-20.

24 | Official publication: Journal of Laws; Number: 2021/1530; Publication date: 2021-08-20.

25 | Official publication: Journal of Laws; Number: 2021/2151; Publication date: 2021-11-26.

26 | Official publication: Journal of Laws; Number: 2021/2008; Publication date: 2021-11-05.

27 | Official publication: Journal of Laws; Number: 2020/1444; Publication date: 2020-08-25.

28 | Official publication: Journal of Laws; Number: 1997/88/553; Publication date: 1997-08-02.

29 | Official publication: Journal of Laws; Number: 1964/16/93; Publication date: 1964-05-18.

30 | Hornyák & Lindt 2023, 31–48; Csák 2014, 5–21.

2. Permits for transporting and processing waste

In Poland, the Waste Act provides the relevant legal regulations for permits regarding waste transportation and processing. In this regard, Chapter 6 (collection and transportation of waste), Chapter 7 (storage of waste), Chapter 8 (disposal of waste), Chapter 9 (transfer of waste and transfer of responsibility for waste management), and Chapter 10 (waste processing in installations and devices) in Section II of the Waste Act as well as Chapter 1 in Section IV of the Act, are significant.

Specifically, Chapter 6 in Section II of the Waste Act pertains to the collection and transportation of waste. Art. 23 of the Waste Act imposes an obligation for the selective collection of waste and prohibits the collection of certain types of waste outside the place in which the waste was generated unless authorised by the authorities for safety or continuity of collection. Art. 24 of the Waste Act defines the rules for waste transportation, including the transport of hazardous goods, and the obligation to indicate the destination and the holder of the waste. In case of violations during transportation, the vehicle may be detained by various authorities, and outstanding fees are subject to enforcement. Art. 24a outlines the procedure for detaining a vehicle with waste, including waste storage locations, cost responsibility, and procedures for the non-collection of the vehicle. Art. 24b imposes an obligation to dispose of waste on the entity conducting waste transportation in the case of a failure to determine the responsible entity.³¹

Chapter 7 in Section II of the Waste Act concerns the storage of waste. According to Art. 25, waste storage must comply with environmental protection and human safety requirements. This is particularly important due to the chemical and physical properties of the waste and their potential hazards. Storage must take place on premises to which the waste holder has legal access and may only be conducted as part of waste generation, collection, or processing. Further, waste may only be stored for a specified period based on its intended use. Waste intended for landfilling may be stored for a maximum of one year before being transported to a landfill. Other waste may be stored only for a period justified by technological or organisational processes, but not exceeding 3 years. Art. 25 also specifies obligations regarding the operation of a monitoring system for waste storage sites. Waste holders are required to maintain a surveillance system that allows images to be stored for one month and must provide these images upon request to environmental supervision authorities, courts, and police, among others; additionally, for certain types of waste, waste holders must ensure that the provincial environmental inspector has real-time access to these images. These provisions do not

31 | Marszelewski 2014, 77–100; Danecka & Radecki, 2022; Karpus 2013; Mostowska 2014; Polak 2022; Judgment of the Provincial Administrative Court in Cracow of 3 October 2023, ref. no. III SA/Kr 689/23; Judgment of the Provincial Administrative Court in Kielce of 9 March 2023, ref. no. I SA/Ke 2/23; Judgment of the Provincial Administrative Court in Gliwice of 17 May 2022, ref. II SA/Gl 402/22.

apply to certain types of waste specified in Annex 2a of the Act or recognised as non-flammable. Additionally, the minister responsible for the climate may specify more detailed requirements for waste storage and the duration of storage, taking into account the properties of the waste and recommendations for environmental and public health protection.³²

Chapter 8 in Section II of the Waste Act discusses waste disposal issues. According to Art. 26, waste holders are obliged to immediately remove waste from places that not intended for waste disposal or storage. Failure to comply with this obligation may result in public authorities imposing the obligation to remove the waste on the waste holder or removing and managing the waste (if it poses a threat to human life, health, or the environment). In cases where the waste holder does not hold the legal title to the property where the waste is located, the owner of the property is obliged to allow the waste holder – or, if necessary, the enforcement authority – to remove the waste. The competent authority may demand reimbursement of the costs incurred for waste removal from the waste holder responsible for its management. If the waste holder fails to respond within 14 days from the date of receipt of the request, the competent authority may impose an obligation to reimburse the costs and a penalty for the delay. Art. 26a regulates situations where immediate waste removal is necessary due to a threat to life, health, or the environment. In such cases, the competent authority may take action to remove and manage the waste, and the waste holder bears the costs of these actions. However, the waste holder is entitled to be reimbursed for the costs incurred if they promptly fulfil the obligations imposed on them by the supervisory authorities.³³

Chapter 9 in Section II of the Waste Act pertains to the transfer of waste and the transfer of responsibility for its management. According to Art. 27, waste producers are obligated to independently manage waste, but they may delegate this task to other entities that possess the necessary permits or concessions. If

32 | Górski 2021; Raguszevska 2019, 43–53; Judgment of the Supreme Administrative Court of 20 July 2023, ref. no. III OSK 544/22; Judgment of the Provincial Administrative Court in Gliwice of 3 June 2022, ref. no. II SA/Gl 300/22; Judgment of the Provincial Administrative Court in Cracow of 22 September 2016, ref. no. II SA/Kr 748/16; Judgment of the Provincial Administrative Court in Cracow of 15 July 2016, ref. II SA/Kr 623/16; Judgment of the Provincial Administrative Court in Cracow of 20 October 2015, ref. II SA/Kr 587/15.

33 | Trzcińska 2015; Rakoczy 2016, 9–26; Judecki 2017, 4; Judgment of the Provincial Administrative Court in Poznań of 10 August 2023, ref. no. II SA/Po 920/22; Judgment of the Provincial Administrative Court in Szczecin of 20 July 2023, ref. no. II SA/Sz 200/23; Judgment of the Supreme Administrative Court of 11 July 2023, ref. no. III OSK 6649/21; Judgement of the Provincial Administrative Court in Gliwice of 4 July 2023, ref. no. II SA/Gl 1163/22; Judgement of the Provincial Administrative Court in Rzeszów of 24 May 2023, ref. II SA/Rz 1571/22; Judgment by the Provincial Administrative Court in Lublin of 13 April 2023, ref. no. II SA/Lu 889/22; Judgment by the Provincial Administrative Court in Warsaw of 24 March 2023, ref. no. IV SA/Wa 2605/22; Judgment by the Supreme Administrative Court of 21 February 2023, ref. III OSK 1873/21; Judgment by the Regional Administrative Court in Cracow of 24 January 2023, ref. no. II SA/Kr 1056/22; Judgment by the Regional Administrative Court in Bydgoszcz of 11 January 2023, ref. no. II SA/Bd 760/22.

a waste producer transfers waste to another waste holder who has the required permits or concessions, responsibility for waste management is transferred to the subsequent waste holder when the transfer occurs. However, if the original waste producer cannot be identified after the transfer of waste, the current or previous waste holder is held responsible for the waste. A producer of hazardous waste is exempt from responsibility for waste management when it is transferred for final recovery or disposal by the waste holder conducting such a process. Notably, waste sellers or brokers do not assume responsibility for waste management if they are not the holders of such waste. Art. 28 discusses the transfer of responsibility for waste among producers who share common premises. According to this article, responsibility for waste may be transferred to one of the producers or to the lessee of the premises if this is established by a written agreement.³⁴

Chapter 10 in Section II of the Waste Act discusses the processing of waste in installations and devices, as well as exceptions to the prohibition on processing waste outside of these places. According to Art. 29, waste is processed exclusively in installations or devices. These installations and devices must meet environmental protection requirements and ensure that waste is processed in accordance with the law. Art. 29a imposes an obligation to transfer unsegregated (mixed) municipal waste to a municipal installation. The entity receiving municipal waste from property owners must transfer this waste to the appropriate municipal installation, which will ensure its processing. The same applies to waste producers from the mechanical-biological treatment process and residues from municipal waste sorting. Art. 30 prohibits processing waste outside of installations or devices, with certain exceptions. Recovery outside of these places is possible for certain types of waste and recovery processes, provided it does not pose a threat to the environment or human health and is carried out in accordance with regulations. Art. 31 regulates the procedure for obtaining a permit for waste incineration outside of installations or devices. The Marshal of the voivodeship or the regional director of environmental protection may issue such a permit if incineration in installations is not possible for safety reasons. An application for such a permit must contain detailed information about the type of waste, quantity, incineration location, and incineration method. The permit specifies the conditions of incineration and its duration. Additionally, the incineration of accumulated plant residues outside of

34 | Modrzejewski 2018; Raguszevska 2019, 43–53; Judgment of the Supreme Administrative Court of 18 July 2023, ref. no. III OSK 2561/21; Judgment of the Provincial Administrative Court in Lublin of 13 April 2023, ref. no. II SA/Lu 690/22; Judgment of the Provincial Administrative Court in Lublin of 13 April 2023, ref. no. II SA/Lu 889/22; Judgment of the Supreme Administrative Court of 20 December 2022, ref. III OSK 1455/21; Judgment of the Provincial Administrative Court in Warsaw of 21 April 2021, ref. no. IV SA/Wa 2661/20; Judgment of the Provincial Administrative Court in Warsaw of 26 March 2021, ref. no. IV SA/Wa 713/20; Judgment of the Supreme Administrative Court of 17 December 2019, ref. no. II OSK 3236/18.

installations and devices is permitted, unless they are subject to mandatory selective collection.³⁵

Chapter I in Section IV of the Waste Act concerns permits for waste collection and processing. According to Art. 41, permits are necessary to carry out waste collection and processing. These permits are issued by the competent authorities where the waste collection or processing is located. The competent authority is the voivode (for undertakings that may significantly affect the environment under the Act of 3 October 2008 on access to environmental information and its protection, public participation in environmental protection, and environmental impact assessments; for waste other than hazardous waste subjected to a recovery process involving the filling of adversely transformed land, if the total amount of waste deposited in the excavation or landfill is not less than 10 mg per day or the total capacity of the excavation or landfill is not less than 25,000 mg; for municipal installations; for issuing a waste collection permit for an area in which the maximum total mass of all types of waste stored during the year exceeds 3000 mg) and the county governor (in other cases). Meanwhile, the regional director of environmental protection is the competent authority responsible for issuing permits for waste collection and processing in enclosed areas. Activities requiring a permit for waste collection and a permit for waste processing may, at the request of the waste holder, be covered by a single permit. Notably, a competent authority must typically consult the mayor or president of the relevant city to issue a waste collection or processing permit; however, this requirement does not apply when the city president has the rights of a county and is the competent authority responsible for the permit. Further, if the city mayor or president does not provide their opinion on the permit within two weeks, then the competent authority can assume that their evaluation is positive.³⁶

3. Administrative control

In Poland, the relevant legal regulation regarding administrative control (in the context of the titular issue) is in the Waste Act. Particular attention should be

35 | Dubiński 2016, 30–39; Dubiński 2013, 78–87; Judgment of the Supreme Administrative Court of 24 January 2023, ref. no. III OSK 6614/21; Judgment of the Supreme Administrative Court of 18 January 2022, ref. no. III OSK 4565/21; Judgment of the Supreme Administrative Court of 18 May 2021, ref. no. III OSK 450/21; Judgment of the Supreme Administrative Court of 29 October 2019, ref. no. II OSK 3032/17; Judgment of the Supreme Administrative Court of 5 March 2019, ref. no. II OSK 961/17.

36 | Gruszecki 2020, 99–112; Marszelewski 2014, 77–100; Dubiński 2013, 78–87; Radecki 2016, 51–64; Dubiński 2016, 30–39; Judgment of the Supreme Administrative Court of 28 March 2023, ref. no. III OSK 7230/21; Judgment of the Provincial Administrative Court in Gdańsk of 18 May 2022, ref. no. II SA/Gd 530/21; Judgment of the Provincial Administrative Court in Lublin of 21 September 2021, ref. no. II SA/Lu 275/21; Judgment of the Provincial Administrative Court in Łódź of 26 August 2021, ref. no. II SA/Łd 209/21.

paid to Art. 41a of the Waste Act, which concerns the inspection of places and facilities intended for waste processing or storage in Poland. The process of obtaining permits, such as a waste collection permit, a waste processing permit, or a waste generation permit, involves inspection by appropriate authorities. In the case of inspections conducted by the voivode's inspector for environmental protection, a representative of the relevant authority also participates. The results of the inspections aim to verify whether the facilities or waste storage sites meet the requirements specified in environmental protection regulations. Similarly, inspections conducted by the district (municipal) commander of the State Fire Service assess compliance with fire protection regulations and the conditions specified in fire safety plans. The authority responsible for requesting an inspection submits necessary documentation, such as applications and fire safety plans, to ensure the inspection is properly conducted. If the inspection result is negative, the competent authority may refuse to issue permits. However, permits may still be issued despite a negative result if the lack of a permit does not pose a threat to life, health, or the environment. Furthermore, significant changes in permits are subject to similar inspection procedures. There are also exceptions to the inspection rules for specific facilities and non-combustible waste.³⁷

Additionally, in light of the provisions of the Act of 20 July 1991 on Environmental Protection Inspection (the EPI Act),³⁸ inspections can be carried out in the field. These inspections, both in individual agricultural holdings and large production farms, can be either planned or unplanned. Planned inspections are conducted in step with the annual plan for EPI activities, while unplanned ones are carried out based on requests from public administrative entities as well as in response to complaints and interventions regarding environmental pollution or the suspicion of such pollution, serious incidents, or to prevent a crime or misdemeanour. Meanwhile, inspections of entrepreneurs are carried out in accordance with the principles set out in the Act of 6 March 2018 – Entrepreneurship Law.³⁹ In accordance with the provisions of the EPI Act, the competent authority of the Environmental Protection Inspection may issue a decision based on the results of the inspection *ex officio* to order the removal of irregularities identified during the inspection within a specified period or establish the obligation to pay a specified fee.⁴⁰

37 | Danecka & Radecki 2022; Dubiński 2016, 30–39; Judgment of the Supreme Administrative Court of 22 March 2022, ref. no. II GSK 79/22.

38 | Official publication: Journal of Laws; Number: 1991/77/335; Publication date: 1991-08-29.

39 | Official publication: Journal of Laws; Number: 2018/646; Publication date: 2018-03-30.

40 | Radecki 2020; Barczak 2020; Gruszecki 2014, 16–26; Judgment of the Provincial Administrative Court in Krakow of 27 October 2017, ref. no. II SA/Kr 1050/17; Decision of the Provincial Administrative Court in Krakow of 31 October 2007, ref. no. II SA/Kr 948/07.

4. Civil law

In terms of civil liability in the context of this paper, standard principles apply (civil liability based on general principles). This means that the Waste Act does not contain specific legal provisions regarding civil liability and, accordingly, appropriate legal norms from the CC⁴¹ are applied.

5. Penal law

In Poland, criminal law related to the illegal dumping of waste is found not only in the PC but also in the Waste Act. This legislative practice is not unique and also applies in other areas of law. The PC regulates the most important and serious prohibited acts, and their classification is based on threats to legally protected goods. However, prohibited acts under the PC are not sectoral or focused on specialised aspects. If there is a need for such a regulation, the Polish legislature includes it in a dedicated law addressing the sectoral or specialised issue. Through this approach, Poland avoids the casuistry of the PC. Nevertheless, it is important to note that criminal provisions are not found only in the PC; for example, the Waste Act also includes such provisions (as well as provisions regarding administrative fines).

5.1. Penal Code Law

In the PC, three significant types of provisions are useful to note for our purposes; those concerning: the improper handling of waste, the improper handling of radioactive material, and the neglect of protective equipment. According to Art. 183 of the PC (the improper handling of waste), individuals who, against the provisions of law, stock, dispose of, process, collect, recycle, neutralise, or transport waste or substances in such conditions or in such a manner that they may threaten human life or health; reduce water, air or land quality; or destroy plant or animal life, will be subject to the penalty of deprivation of liberty for 1 to 10 years. Further, individuals who, against the provisions of law, import substances threatening the environment; import or export waste; or, in defiance of a duty, allow such acts, are also subject to the same penalty. Meanwhile, individuals who import or export dangerous waste without the required notification or licence or against its conditions are subject to the penalty of deprivation of liberty for 2 to 12 years. The same penalty applies to individuals who abandon dangerous waste in a location that has not been designated for the storage or stocking of such waste. However, if the perpetrator of the above-mentioned actions acts unintentionally, he is subject to

41 | Wiśniewski 2018; Tanajewska 2023; Lutkiewicz-Rucińska 2023.

a fine, the penalty of the limitation of liberty, or the penalty of the deprivation of liberty for up to 5 years.⁴²

According to Art. 184 of the PC (improper handling of radioactive material), individuals who produce, process, transport, import, export, accumulate, stock, store, possess, make use of, employ, dispose of, abandon, or leave without a proper protection nuclear material or another source of ionising radiation in such conditions or in such a manner that they may threaten the life or health of a person; substantially decrease water, air, or land quality; or substantially destroy plant or animal life, will be subject to the penalty of deprivation of liberty for 3 months to 5 years. The same penalty applies to individuals who, in defiance of a duty, allow such acts. However, if the perpetrator of the act specified in Art. 184 of the Polish PC acts unintentionally, they are subject to a fine, restriction of liberty, or imprisonment for up to 2 years.⁴³

According to Art. 186 of the PC (lack of care for protective devices), individuals who, in defiance of a duty, do not properly maintain or employ devices protecting water, air, or land from pollution or protecting against radioactive contamination or ionising radiation, will be subject to a fine, restriction of liberty, or imprisonment for 3 months to 5 years. Further, individuals who, in defiance of a duty, permit the use of a building structure or a group of building structures without legally required devices will be subject to the same penalty. However, if the perpetrator of the act referred to in Art. 186 acts unintentionally, he will be subject to a fine or the penalty of limitation of liberty.⁴⁴

5.2. Extra-Code Penal Law

As noted above, the Waste Act also contains criminal provisions. Their placement in the act indicates that it is dealing with non-codified criminal law. First, it includes managing waste in a manner that endangers human life and health or the environment. Second, it involves a breach of the principle of proximity – the province's area. Third, it violates the obligation to process waste in a manner that does not endanger human life or health or the environment. Fourth, it breaches the waste collection conditions for entities conducting unprofessional waste collection activities. Fifth, it is waste management contrary to the information reported to the register of entities introducing products, products in packaging, and waste management. Sixth, it breaches the obligation to submit an application for registration

42 | Trybus 2023, 73–85; Szwejkowska & Zębek 2014, 64–74; Padrak & Solan, 2010, 61–68; Radecki 2001, 17–37; Radecki 2000, 5; Judgment of the Court of Appeal in Wrocław of 21 September 2017, ref. no. II AKa 236/17; Judgment of the Supreme Court of 11 October 2016, ref. no. V KK 204/16.

43 | Szwejkowska & Zębek 2014, 64–74; Łukaszewicz & Ostapa 2001, 54–75; Wala et al. 2022.

44 | Danecka & Radecki 2022, 324–352; Danecka & Radecki 2022, 189–236; Szwejkowska & Zębek 2014, 64–74; Padrak & Solan 2010, 61–68; Judgment of the Supreme Court of 9 October 2020, ref. no. V KK 402/19.

in the register of entities introducing products, products in packaging, and waste management. Seventh, it breaches the obligation to have the required documents during waste transport, the obligation to store and provide waste record documents, or the obligation to enter data into the Database of Products and Packaging and Waste Management. Eighth, it breaches reporting obligations. Ninth, it violates the prohibitions related to dealing with PCB (i.e. polychlorinated biphenyls, polychlorinated triphenyls, monomethyl tetrachlorodiphenyl methane, monomethyl dichlorodiphenyl methane, monomethyl dibromodiphenyl methane, and mixtures containing any of these substances in a total weight concentration exceeding 0.005%). Tenth, it violates the prohibition on mixing waste oils. Eleventh, it violates prohibitions and orders regarding the processing of medical and veterinary waste. Twelfth, it violates the requirements for transferring municipal sewage sludge. Thirteenth, it violates the conditions for the application of municipal sewage sludge. Fourteenth, it breaches the obligation to store tests of municipal sewage sludge and the soils on which these sludges are to be applied, as well as information on the doses of this sludge that may be applied to individual soils. Fifteenth, it breaches the prohibition on the disposal of waste from the production processes of titanium dioxide and from the processing of such waste into the sea. Sixteenth, it breaches the requirements for accepting waste at a metal waste collection point. Seventeenth, it breaches the conditions for operating a waste disposal site. Eighteenth, it breaches the obligation to employ a person holding a certificate confirming qualifications in waste management. Nineteenth, it breaches the obligation for the thermal conversion of waste in a waste incineration plant or waste co-incineration plant. Finally, it breaches the conditions for accepting waste at a waste incineration plant or waste co-incineration plant.⁴⁵

According to Art. 171 of the Waste Act (conducting waste management in a manner that endangers human life and health and the environment), anyone who conducts waste management contrary to the obligation specified in the Waste Act (specifically in Art. 16) shall be subject to imprisonment or a fine. According to Art. 172 (violation of the principle of proximity – voivodeship area), anyone who, contrary to the provisions of the Waste Act, applies municipal sewage sludge or disposes of infectious medical waste or infectious veterinary waste outside the voivodeship area in which the waste is generated shall be subject to imprisonment or a fine. The same penalty applies to anyone who, contrary to the provisions of the Waste Act, brings such waste generated outside the area of that voivodeship into the voivodeship area for the purposes mentioned above.

According to Art. 176 of the Waste Act (violation of the obligation to conduct waste processing in a manner that does not pose a threat to human life or health and the environment), anyone who, contrary to the provisions of the Waste Act,

45 | Danecka & Radecki 2022; Karpus 2013; Górski 2021.

processes waste in a manner that does not ensure that such processes do not endanger human life or health and the environment, shall be subject to imprisonment or a fine. The same penalty applies to anyone who, contrary to the provisions of the Waste Act, processes waste in a manner that does not ensure that the waste generated from such processes does not pose a threat to human life or health and the environment.

According to Art. 177 of the Waste Act (violation of the conditions for waste collection by an entity conducting non-professional waste collection activities), anyone who collects waste without having concluded a contract (Art. 45(2)) shall be subject to imprisonment or a fine.

According to Art. 178 of the Waste Act (mismanagement of waste contrary to the information reported to the register of entities introducing products, products in packaging, and managing waste), anyone who mismanages waste contrary to the information reported to the register (Art. 52) shall be subject to imprisonment or a fine.

According to Art. 179 of the Waste Act (violation of the obligation to submit an application for entry into the register of entities introducing products, products in packaging, and managing waste), anyone who, contrary to the provisions of the Waste Act, fails to submit an application for entry into the register, a change in entry in the register, or removal from the register or who submits an application inconsistent with the real situation shall be subject to imprisonment or a fine.

According to Art. 180 of the Waste Act (violation of the obligation to have required documents during waste transport, obligation to keep and provide waste records, or obligation to enter data into the Waste Database), anyone who fails to fulfil their obligations regarding possession, during waste transport, of the confirmation generated from the Waste Database (Art. 69(1a)) or possession, during municipal waste transport, of the confirmation generated from the Waste Database (Art. 71a(3)) shall be subject to a fine. The same penalty applies to those who do not keep, provide, or submit, for a specified period, the required documents and all data as required by the Waste Act (Art. 72(1)). The same penalty also applies to those who, contrary to the obligation, do not enter or do not enter in a timely manner into the Waste Database the information contained in the waste records prepared in the specified form (Articles 67(7), (10), and (11)).

According to Art. 180a of the Waste Act (violation of reporting obligations), anyone who, contrary to the obligation (Art. 76), fails to submit a report, shall be subject to a fine.

According to Art. 181 of the Waste Act (violation of prohibitions regarding PCB handling), anyone who, contrary to the provisions of the Waste Act, subjects PCB to recovery or incineration on ships, shall be subject to imprisonment or a fine.

According to Art. 182 of the Waste Act (violation of the prohibition on mixing waste oils), anyone who, contrary to the provisions of the Waste Act, mixes waste oils with other hazardous wastes (including those containing PCB) during their

collection or storage when the level of specified substances in the waste oils exceeds permissible values shall be subject to imprisonment or a fine.

According to Art. 183 of the Waste Act (violation of prohibitions and orders regarding the treatment of medical and veterinary waste), anyone who recovers medical and veterinary waste when such recovery is impermissible under the Waste Act or disposes of such waste in a way that violates the provisions of the Waste Act shall be subject to imprisonment or a fine. The same penalty applies to those who, contrary to the Waste Act, dispose of infectious medical waste or infectious veterinary waste by co-incineration.

According to Art. 184 of the Waste Act (violation of requirements for transferring municipal sewage sludge), anyone other than the producer of municipal sewage sludge who transfers municipal sewage sludge for land application to the surface owner shall be subject to imprisonment or a fine. The same penalty applies to those who, contrary to the provisions of the Waste Act, do not notify the voivodeship inspector of environmental protection of the intention to transfer municipal sewage sludge to the surface owner where these sludges are to be applied.

The same penalty applies to the producer of municipal sewage sludge who, contrary to the provisions of the Waste Act, does not subject municipal sewage sludge and the soils on which they are to be applied to testing before their use, nor do they provide information on the doses of sludge and the results of the tests along with the municipal sewage sludge.

According to Art. 186 of the Waste Act (violation of the obligation to keep records of tests of municipal sewage sludge and soils on which these sludges are to be used, as well as information on the doses of this sludge that can be used on individual soils), anyone who owns a land surface and fails to keep the test results or information required by the Waste Act shall be subject to imprisonment or a fine.

According to Art. 187 of the Waste Act (violation of the prohibition of disposal, consisting of discharging into the sea, including placing on the seabed, waste from the production processes of titanium dioxide and from the processing of such waste), anyone who, contrary to the provisions of the Waste Act, disposes of waste originating from the production processes of titanium dioxide or disposes of the products of the processing of such waste by discharging it into the sea, including placing it on the seabed, shall be subject to imprisonment or a fine.

According to Art. 188 of the Waste Act (violation of the requirements for accepting waste at a metal waste collection point), anyone operating a metal waste collection point who accepts non-packaging metal waste from food products without confirming the identity of the person delivering the waste, without completing the metal waste acceptance form, or without completing the metal waste acceptance form correctly shall be subject to imprisonment or a fine.

According to Art. 189 of the Waste Act (violation of the conditions for operating a waste landfill), anyone managing a waste landfill who accepts waste for storage for which the basic waste characteristic has not been prepared (Art. 110 (2)) or for

which a compliance test has not been conducted (Art. 113 (1)) when required shall be subject to imprisonment or a fine. The same penalty applies to anyone who is in charge of a waste landfill and fails to fulfil the obligations incumbent upon them regarding: (1) verification (Art. 114 (2)); (2) sampling and storing samples of waste delivered for storage at the waste landfill (Art. 115 (1)); (3) determining the mass of waste accepted for storage (Art. 119 (1)); (4) verifying the compliance of the accepted waste with the data contained in the waste transfer note or documents required for international waste movement (Art. 119 (2)); (5) checking the containers and certificates required for storing metallic mercury waste (Art. 119 (3) of the Waste Act); (6) refusing to accept waste for storage at the waste disposal site in cases (Art. 120 (1) of the Waste Act); (7) ensuring selective waste storage (Art. 121 (1) of the Waste Act) stored at the waste disposal site, taking into account the condition specified in the Waste Act (Art. 121 (2)); (8) monitoring the waste disposal site (Art. 124 (4)); (9) transferring the results of monitoring of the waste disposal site to the provincial inspector of environmental protection (Art. 124 (5)); (10) maintaining and operating the waste disposal site in a manner ensuring proper functioning of the technical equipment constituting the facility's infrastructure and compliance with sanitary, safety, hygiene, fire protection, and environmental protection requirements, in accordance with the waste disposal site operation manual and the decision approving this manual (Art. 135 (2)); (11) notifying the voivodeship inspector of environmental protection or the state provincial sanitary inspector of observed changes in parameters detected at the waste disposal site (Art. 138); (12) storing documents, based on which a report on generated waste and waste management is prepared, until the closure of the waste disposal site, and transferring these documents to the next waste disposal site manager or the land owner (Art. 78 (2) and (3)); or (13) ceasing to accept waste for disposal at the waste disposal site or its designated part upon obtaining consent to close the waste disposal site or its designated part (Art. 146 (1)), or a decision to close the waste disposal site or its designated part (Art. 148 (3)).

According to Art. 190 of the Waste Act (violation of the obligation to employ a person holding a certificate confirming qualifications in waste management), anyone who employs, contrary to the provisions of the Waste Act, a person without a certificate confirming qualifications in waste management appropriate to the conducted waste disposal process as a manager of a waste disposal site, waste incineration plant, or waste co-incineration plant, is subject to imprisonment or a fine.

According to Art. 191 of the Waste Act (violation of the obligation to thermally process waste in a waste incineration plant or co-incineration plant), anyone who, contrary to the regulations of the Waste Act, thermally processes waste outside of a waste incineration plant or co-incineration plant is subject to imprisonment or a fine.

According to Art. 192 of the Waste Act (violation of the conditions for accepting waste for incineration in a waste incineration plant or co-incineration plant), anyone managing a waste incineration plant or co-incineration plant who accepts waste for thermal processing without determining the mass of the waste or verifying the conformity of the waste with the data contained in the documents (Art. 160 (2) (2)) or who accepts hazardous waste for thermal processing without familiarising themselves with the waste description or collecting or storing samples of such waste (Art. 160 (3)) is subject to imprisonment or a fine.

According to Art. 193 of the Waste Act, adjudication in cases referred to in Articles 171 to 192 shall be carried out according to the rules and procedures specified in the Act of 24 August 2001 – the Code of Petty Offences Procedure. This is crucial because it indicates that the penal provisions do not provide for crimes but petty offences. This means that the Waste Act penalises prohibited acts, which generally weigh less and have fewer social consequences than crimes.⁴⁶

5.3. Administrative Fines

The Waste Act also includes provisions regarding administrative fines. It is important to note that in Poland, an entity can be held liable for violating both criminal and administrative provisions simultaneously; indeed, an entity may be considered to violate both types of provisions by performing a single act. In terms of administrative responsibility, relevant legal norms are found in Articles 194 to 202 of the Waste Act.⁴⁷ These norms include prerequisites for imposing administrative fines as well as administrative fines for waste transporters that fail to deliver waste or that transport waste without permission or registration; administrative fines for district governors who fail to establish a designated area for parking vehicles

46 | Doroszewska 2016, 16–30; Smarzewski 2013, 61–87; Banasik 2005, 87–91.

47 | Górski 2021; Danecka & Radecki 2022; Karpus 2013; Fleszer 2022, 89–100; Judgment by the Provincial Administrative Court in Warsaw of 30 October 2023, ref. no. IV SA/Wa 1270/23; Judgment by the Supreme Administrative Court of 24 March 2023, ref. no. III OSK 7164/21; Judgment by the Supreme Administrative Court of 21 February 2023, ref. III OSK 7601/21; Judgment by the Supreme Administrative Court of 20 December 2022, ref. no. III OSK 1594/21; Judgment by the Provincial Administrative Court in Warsaw of 4 January 2022, ref. IV SA/Wa; Judgment by the Supreme Administrative Court of 28 April 2021, ref. no. III OSK 309/21; Judgment by the Provincial Administrative Court in Warsaw of 15 April 2021, ref. no. IV SA/Wa 2716/20; Judgment by the Provincial Administrative Court in Warsaw of 26 March 2021, ref. no. IV SA/Wa 2567/20; Judgment by the Provincial Administrative Court in Warsaw of 26 March 2021, ref. no. IV SA/Wa 2568/20; Judgment of the Provincial Administrative Court in Warsaw of 19 March 2021, ref. no. IV SA/Wa 2461/20; Judgment of the Provincial Administrative Court in Warsaw of 18 March 2021, ref. no. VIII SA/Wa 815/20; Judgment of the Provincial Administrative Court in Warsaw of 8 March 2021, ref. no. IV SA/Wa 2686/20; Judgment of the Provincial Administrative Court in Warsaw of 11 February 2020, ref. IV SA/Wa 2679/19; Judgment of the Provincial Administrative Court in Warsaw of 20 March 2019, ref. no. IV SA/Wa 3101/18; Judgment of the Provincial Administrative Court in Warsaw of 19 April 2018, ref. no. IV SA/Wa 133/18; Judgment of the Supreme Administrative Court of 20 October 2017, ref. no. II OSK 288/16; Judgment of the Supreme Administrative Court of 20 October 2017, ref. no. II OSK 1795/16.

detained with waste; the basis on which the provincial inspector of environmental protection can impose administrative fines; the substantive and territorial jurisdiction in which administrative fines can be imposed; the legal basis for the explanatory proceedings of the provincial inspector of environmental protection; the elements of the decision regarding whether to impose administrative fines; the directive for determining the amount of administrative fines; and the method by which the administrative fines will be paid.

According to Art. 194 of the Waste Act (conditions for imposing an administrative monetary penalty), an administrative monetary penalty is imposed for: (1) changing the classification of hazardous waste to non-hazardous waste (Art. 5 of the Waste Act), by diluting or mixing it with other waste, substances, or materials, leading to a reduction in the initial concentration of hazardous substances to a level lower than the level specified for hazardous waste; (2) mixing different types of hazardous waste; mixing hazardous waste with non-hazardous waste; mixing hazardous waste with substances, materials, or objects, including diluting substances (Art. 21(1)), or mixing such waste (Art. 21(2)); (3) transporting waste in a way that violates the requirements provided for in the Waste Act; (4) storing waste in a manner inconsistent with the requirements provided for in the Waste Act; (5) failing to implement a visual control system for monitoring the location of waste storage or disposal, or operating such a system in a way that violates the provisions of the Waste Act; (6) transferring waste generated in the mechanical-biological treatment process of unsorted (mixed) municipal waste or residues from municipal waste sorting, intended for disposal, to a municipal facility in a way that violates the provisions of the Waste Act; (7) collecting waste in a way that violates the prohibitions in the Waste Act (Art. 23 (2)); (8) commissioning the performance of waste management obligations to entities that have not obtained the required decisions or registrations, contrary to the provisions of the Waste Act; (9) failing to maintain security for claims contrary to the obligation (Art. 48a (11)), or failure to submit an application to change the form or amount of security for claims (Art. 48a (8)); (10) conducting business without the required entry in the register; (11) failing to include the registration number on documents prepared in connection with the conducted activity, contrary to the obligation (Art. 63); (12) failing to keep records of waste or keeping such records in an untimely manner or not in accordance with the actual state; (13) discharging waste oils into waters, soil, or land in a way that violates the prohibitions (Art. 93) of the Waste Act; (14) diluting or preparing mixtures of waste with each other or with other substances or objects (Art. 122 (3)); (15) extracting waste contrary to the provisions of the Waste Act; (16) transferring selectively collected waste for thermal treatment in preparation for reuse or recycling, contrary to the obligation specified in the Waste Act; and (17) transferring non-segregated (mixed) municipal waste for thermal treatment contrary to the provisions of the Waste Act.

According to Art. 194 of the Waste Act, the administrative fine for the aforementioned violations is not less than 1000 PLN and cannot exceed 1,000,000 PLN. Additionally, an administrative fine is imposed for collecting or processing waste without the required permit (Art. 41). The fine cannot be less than 1000 PLN and cannot exceed 1,000,000 PLN. An administrative fine is also imposed for waste management contrary to the obtained permit (Art. 41). The fine cannot be less than 1000 PLN and cannot exceed 1,000,000 PLN.

According to Art. 194b of the Waste Act, an administrative fine is imposed for the non-delivery of waste by the waste transporter (Art. 24 (4)) to the waste holder or the designated waste destination indicated by the waste transport service provider. In this case, the fine cannot be less than 1000 PLN and cannot exceed 100,000 PLN.

According to Art. 195 of the Waste Act (administrative fine for transporting waste without permission or registration), anyone who transports waste without obtaining a permit for waste transport or registration in the register, contrary to the obligation (Art. 233 (2)), is subject to an administrative fine ranging from 2000 to 10,000 PLN.

According to Art. 195a (administrative fine for failure by the county governor to establish a place for parking vehicles with waste), the county governor who, contrary to the obligation (Art. 24a (4)), fails to establish a location meeting the conditions for storing waste, is subject to an administrative fine ranging from 10,000 to 100,000 PLN. Such an administrative fine is imposed at the end of each year in which the specified obligation has not been fulfilled.

According to Art. 195b of the Waste Act (administrative fine for failure to designate a place for parking vehicles with waste), an authority that, contrary to the obligation (Art. 24a (3)), fails to designate, in the provincial waste management plan, a location meeting the conditions for storage, is subject to an administrative fine ranging from 10,000 to 100,000 PLN.

According to Art. 195c of the Waste Act (imposition of administrative fines by the provincial environmental protection inspector), the fines referred to in Articles 195a and 195b of the Waste Act are imposed by the provincial environmental protection inspector and are determined by taking into account the number and severity of the identified irregularities and the obligations violated by the authority.

According to Art. 196 of the Waste Act (subject matter and territorial jurisdiction for imposing administrative fines), the administrative fine is imposed based on the decision of the competent provincial environmental protection inspector based on the place in which the waste was generated or managed.

According to Art. 197 of the Waste Act (explanatory proceedings of the provincial environmental protection inspector), the provincial inspector of environmental protection determines the violation based on inspections, including measurements taken during them or by other means; measurements and tests conducted by the entity obliged to perform such measurements and tests; and

notifications made accordingly by the Marshal of the voivodeship, regional director of environmental protection, or the minister responsible for climate affairs.

According to Art. 198 of the Waste Act (elements of the decision imposing an administrative fine), decisions regarding whether to impose an administrative fine are related to the type of violation, the day of its determination, and the amount of the fine. Further, according to Art. 199 of the Waste Act (directive on determining the amount of the administrative fine), when determining the amount of the administrative fine, the voivodeship inspector of environmental protection takes into account the type of violation and its impact on human life and health as well as the environment, the duration of the violation, the scale of the activity conducted, and the potential consequences of the violation, as well as their magnitude. Additionally, according to Art. 201 of the Waste Act (method of payment of the administrative fine), the administrative fine must be paid within 14 days from the day on which the decision on imposing the administrative fine is finalised. The fine must be paid to a separate bank account owned by the relevant voivodeship inspector of environmental protection. After each quarter, the revenues from administrative fines are transferred by the voivodeship inspector of environmental protection to the bank account of the National Fund for Environmental Protection and Water Management by the end of the next month.

6. Conclusions

This paper explored legal regulations and sanctions related to the illegal dumping of waste in Polish environmental law (including related administrative law norms and certain criminal and civil law rules). The above discussion leads to the following conclusions: (1) Poland has adequately implemented EU solutions (Directive 2008/98/EC; Directive 2018/851) by adopting many legal acts. (2) The administrative provisions in the Waste Act concerning permits for the transport and processing of waste appear to be appropriately constructed. This regulation should also be evaluated positively. (3) Administrative and legal control provisions appear to be incomplete in the Waste Act. The Waste Act should also include detailed provisions regarding on-site inspections; currently, it is necessary to refer to the EPI Act. (4) The legal provisions governing legal liability are inadequate. The general application of the general principles of civil liability to matters related to the titular issue are insufficient. It is necessary to introduce comprehensive and detailed legal regulations with a civil law character to the Waste Act. For example, legal regulations that replace the application of the general principles of civil liability should be introduced into the Waste Act. (5) Polish criminal laws, both those in the PC and the Waste Act, as well as those providing for administrative fines, should be assessed positively – this type of legal regulation deserves praise and should serve as a model.

In conclusion, the issue of the illegal dumping of waste in environmental law is crucial and should be managed across multiple levels (criminal, administrative, and civil) with appropriate and responsible legal regulations. In Poland, the Waste Act offers appropriate legal provisions for the criminal dimensions of this problem. However, the same cannot be said for the administrative dimension, particularly regarding control; this dimension requires further amendment. Moreover, specific provisions are also lacking for civil liability.

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