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EVIDENCES AND SUBSTANTIATION IN APPLICATION OF JURIDICAL RESPONSIBILITY OF THE TRESPASS FOR THE ENVIRONMENT

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Annotation. There is an expression that says "The art of justice is the ability to substantiate". Likewise almost universally recognizable, that the essence of juridical procedures are evidences and vindication, while procedural rules of substantiation (procedural form) designated in the regulatory norms can effectively help, or in some circumstances even obstruct the process of substantiation.

The clause 1 of the article 61 of the Law on Environmental Protection of the Republic of Lithuania disclose the concept of "environment", which means the system functioning in nature and comprising its interconnected components (the earth's surface and entrails, air, water, soil, flora and fauna, organic and inorganic substances), as well as natural and anthropogenic ecological (created by human being for their liveliness or highly varied) systems[1].

While escalating the question on the responsibility for the trespass of environment, we will analyse major aspects of evidences and substantiation on the application of administrative and criminal persecution, notwithstanding the fact that damage for the environment can include civil and disciplinary liability or requirement to restore the previous state of the environment, etc.

Keywords: Criminal Acts and Misdemeanours for Environment; Evidences and Substantiation; Subject of Substantiation; Criminal Liability and Administrative Liability for the Crimes committed to the Environment.

INTRODUCTION

In the clause 3 of the article 53 of The Constitution of the Republic of Lithuania is highlighted the duty of each person to protect the environment from harmful influences, in the article 54 defined *duty of the State to take a care of the protection of the natural environment, wildlife and plants, individual objects of nature and areas of particular value and supervise a sustainable use of natural resources, their restoration and increase. The destruction of land and the entrails, the pollution of water and air, radioactive impact on the environment as well as depletion of wildlife and plants is prohibited by law*[2]. Natural resources means elements of

[1] Lietuvos Respublikos aplinkos apsaugos įstatymas. Valstybės žinios, 1992, Nr. 5-75 (su vėlesniais pakeitimais).
[2] Lietuvos Respublikos Konstitucija. Valstybės žinios, 1992, Nr. 33-1014 (su vėlesniais pakeitimais).

organic and inorganic nature – flora, fauna, water, soil, etc., which are used or may be used by man in order to satisfy his needs. Certainly the consumption of natural resources must be rational, considerable and do not infringe legislative norms of the Republic of Lithuania or norms of International legal acts.

All individuals and institutions must restrain from the activities which may harm the above indicated and legislatively protected objects. In most cases criminal acts and misdemeanours of administrative norms with respect to the environment imprints certain marks, lesions or other informative signs in the material surrounding (in the documents, other objects), and individuals who were observing acts or otherwise were related to the committed acts are able to memorize particular details of the committed act and recite them.

There are two main purposes of the substantiation: to determine if the act was committed; and identify the subject of committed act.

Usually substantiation is related with the act committed in the past, which is determined with the help of the empirical method (performing certain investigative actions and with the help of five senses to fixate the results) and rational logical cogitation.

The difference of cognitive practice in the judicial proceedings and cognitive practice in the other fields of human being activities is based on concreteness of certain circumstances of substantiation, the order of proceedings of the substantiation, methods, other instruments detailed in the valid norms of legal acts.

However plurality of the principals applicable in the criminal and administrative proceedings, which are typical in the theory of general cognition (gnoseology), in the light of firsts proceedings differ from second theory, the difference is related with peculiarities of specific object of the cognition.

Herein the focus of research and cognition is concentrated on specific facts of the past, but not on general and social peculiarities.

The goal of this article is to investigate what is the relation of evidences and substantiation in the criminal process and administrative proceedings when determining the responsibility of the misdemeanour for the environment.

The *object* of the research is relationships of the society developed in in the concrete sphere, and the *subject* of the research is – legal acts regulating evidences and process of substantiation, designated to determine and examine criminal acts and misdemeanours for the environment, as well as other scientific publications on this plot.

The methods of the research are: system analysis; critique; documentary analysis and *methods* of generalization.

THE CONCEPT OF EVIDENCES AND ITS RELATION IN THE CRIMINAL PROCES AND ADMINISTRATIVE PROCCEEDINGS

Hence, as was highlighted previously, all individuals must restrain from the acts, which may inflict harm on soil, entrails, water, air, flora and fauna. For the protection of these objects, the most rigorous responsibly defined – the criminal and administrative responsibilities. From the very beginning it is not clear what exact responsibility will be applicable, the difficulty of this process is based on the fact that first of all there is a requirement to estimate what kind of jeopardy have arisen to the objects protected in the legal acts designated for the environment and consumption of natural resources if the danger have emerged to the life or health of individuals, or the damage to the air, soil, water, fauna and flora have arisen or other significant damage have arisen for the environment[3]. What is definable as harm for the environment the case law construes frames of some general principles: in the determination if the harm did negative impact to the environment it is essential to estimate concrete negative changes of the nature elements or functions of these elements, or deterioration of the positive impact of the nature to the environment or individuals. Solving out the question on the level of the harm made to the environment is it rather high or not, also solving out if other effects are seriously damaging environment, the focus can not rely only on what was the financial loses or monetary expression of the harm to environment, the focus should be on the nature of misdemeanour of regulation designated for the protection of the environment, on the nature and value of the harm made to ecosystem, on the importance of the objects of the nature and the harm was made on them, on the degree of harm, possibility to restore previous state of the environment, etc.[4]. If these harms are not in question then the administrative responsibility can be incriminated to the individual for the committed misdemeanour. This is designated in the 2 clause of the 9 article of the Code of Administrative Violations of Law of the Republic of Lithuania (abbreviation - CAVL), where is stated that, administrative liability shall come into effect if for the misdemeanour indicated

[3] **Žvaigždinienė I.**Teisinė žalos aplinkai samprata. Nepriklausomos Lietuvos teisė: praeitis, dabartis, ateitis. Vilnius, 2012. P.342-358.
[4] Lietuvos Aukščiausiojo Teismo 2010 m. kovo 30 d. nutartis baudžiamojoje byloje Nr. 2K-159/2010.

in the Code and from the nature of committed trespass the criminal liability can not be imposed. [5]

In the determination of the Code of Criminal Procedure of the Republic of Lithuania (abbreviation – Criminal Procedure Code)[6] stated the requirement promptly and properly disclose criminal act, also with a requirement to suitably apply the legal norm, the purpose of these requirements is that the individual committed the act would be justly punished and no other guiltless person would be punished (article 2). Meanwhile in the Code of Administrative Violations of the Republic of Lithuania goals are as follows: *timely, comprehensively, entirely and objectively disclose circumstances of all cases, resolve cases with respect to the legal acts, secure the enforcement of the official pronouncement, disclose reasons and conditions of the intention to commit the trespass of the administrative law; prevent from other trespasses, educate citizens, that they would follow the law, strengthen legitimacy* (article 248).

Implementation of the indicated requirements can be achievable hereunder through the substantiation methods designated in the legal acts. In the theory of substantiation evidences are described as follows: the reflection of the criminal acts in the conscious of the different individuals or in the material objects, obtained with respect to the requirements set in the legal acts, hereby sustaining the lawful decisions, and the basis of acts taken in the criminal process.

Nevertheless, escalating this theme emerges necessity to disclose not only theoretical concepts, but also how evidences and process of substantiation are described in the keystone legal acts, i.e. in the mentioned codes.

Distinctiveness of the present Criminal Procedure Code is not to use the term of evidences at all while structuring separate sections and institutes. Although in our opinion the content of the most norms discloses evidences and other institutes of the substantiation though directly it is not expressed. The only one 20 article of the Criminal Procedure Code mentions the term of *evidences,* in the light of: any data verified in accordance to the legal requirements may be considered as evidences, evaluate if the obtained data can be acknowledge as an evidences the established following legal rules apply: Court has a full discretion to qualify particular data as evidence; Only data, which confirms or denies facts

[5] Lietuvos Respublikos administracinių teisės pažeidimų kodeksas. Papildytas leidimas 2013 m. gegužės 20 d. Vilnius. Leidykla „Eugrimas".
[6] Lietuvos Respublikos baudžiamojo proceso kodeksas. Patvirtintas 2002 m. kovo 14 d. įstatymu Nr.IX-785. Dvyliktoji pakeista ir papildyta laida. Lietuvos Respublikos teisingumo ministerija. Vilnius, 2013.

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important for the case may be regarded as evidence; Evidence may be based only on data collected in accordance with legal requirements and procedures; Court shall evaluate evidence in accordance with inner belief, based on comprehensive and unprejudiced analyses of all facts and materials of the case, according to the legal requirements.

As it was mentioned previously, not only this particular article of Criminal Procedure Code is related with the law of evidences, but most of the norms of this Code relates, the reason of this assentation is that purport of each article is to orientate purpose of the respective investigation, the progression, prevenient and subsequent necessary acts for disclosure of the committed violation, successful investigation and acceptance of appropriate procedural decisions. Let us acknowledge, that submission of the complaint, allegation or notification indicates that the substantiation is required and the criminal act was committed, that a decision can or will be decreed, furthermore the investigative actions will be taken and the procedural force will be taken, etc. Hence, evidences in the criminal procedures and substantiation are cornerstone institutes, determinative particular recognition-truth evaluation process, designated for the implementation of the purpose of the criminal procedures.

Article 256 of the CAVL defines evidences as: *whichever factual data, based on which the authorized person evaluates the administrative violation or decides that the violation was not committed, disclose the individual who is responsible for the violation and other circumstances important for the case.*

Therefore, oppositely from Criminal Procedure Code here is highlighted factual data and there is no other reference about the process of collection of factual data based on the legal acts requirement, whereas in the theory of criminal procedures law the gathering of factual data is related with admissibility of the evidences. Therewith CAVL does not mention requirements for the legitimacy and verification of evidences, though in the theory of law and in the case law these requirements are constantly emphasized and crucial.

According to the Criminal Procedure Code evaluators of evidences are judge and the court, while in the CAVL the list of evaluators is wider: officer evaluates evidence in accordance with inner belief, based on comprehensive and unprejudiced analyses of all facts and materials of the case, according to the legal requirements and cognition of the law. Therefore Criminal Procedure Code unquestionably indicates, that evidences are related with the process of the procedural investigation of the criminal case in the court, for example in the judicial proceeding it is allowable to declare publically the testimony of victim, witness or

defendant previously declared only to the court or provided to the pre-trial judge (article 276 of Criminal Procedure Code).

At this point the question arise, what criteria of substantiation may apply in the stage of pre-trial investigation. With respect to the legal norms of present Criminal Procedure Code, the conclusion can be drawn that there is no substantiation in the pre-trial investigation, there is only a domestic recognition However it can not be denied, that gathering of the evidentiary data with respect to the procedural methods and measures is the substantiation itself, otherwise it would be recognised, that investigator in the process of collection, gathering (fixating), verification of the factual data of the case does not analyse the data, does not verify and evaluate the data and does not participate in the process of the substantiation. Assuming that in the stage of pre-trial investigation the doubtful tasks are performing, could raise the question that gathered evidences a priori will have less significant meaning, because the minutes of procedural act can not be read through. Though in most cases the trial investigation is public and therefore all individuals have a right and opportunity to be aware what evidences are used by judges. Certainly the court has exclusive right and obligation to evaluate the validity of the evidences previously gathered and presented to the court, however in both stages (pre-trial and trial) should be applicable equal standards, otherwise it could lead to the situation, when prosecutor, who is entitled to make decisions with respect of the progress of the investigation, who is entitled to present evidences to the court is not a subject of substantiation, stipulate by faulty understanding that investigator is not valuating the evidences and do not participate in the process of substantiation.

Though in the superior legal act that Criminal Procedure Code legal act, the Constitution there is designated the independency of the investigator, judge or court, all of them shall obey only on the rules of legal acts (article 118). In our opinion the substantiation is the: search of evidences; discovery of evidences, fixation, gathering, disposal of evidences, and it can not rely on the hierarchy of the subject operating in the investigative process.

The importance of search, verification and evaluation of factual data can not be minimised in the pre-trial stage, unduly give prominence to the logical estimation of evidences in the court (evaluation of the gathered information entirely), is not rightful because only around one third of all initiated investigations reach the courts. Possibly in the countries with common law jurisdiction it is usual to associate substantiation with trial proceedings, as generally judges do not familiarised themselves with the recorded procedural acts before the

trial. Nonetheless in the practice of criminal procedures in the Republic of Lithuania, the prosecutor decrees the final decision subsequently the pre-trial investigation is exercised. The subjects of pre-trial investigation can not avoid evaluation of the evidences in the process of search of the factual data of the committed crime.

For example, in the process of interrogation of the victim or verification of evidences in the crime scene the subject of process identifies the reliability of the source of data and authenticity of the gathered information, moreover the subject of process fixates conditions of the interrogation, and this leads to the importance of admissibility, tangibility and reliability of the gathered evidences.

Certainly the meaning of evidences can vary dependently with the stage of the process, therefore investigator together with prosecutor can not be eliminated from the process of substantiation, and from the list of evaluators of evidences.

The process of substantiation begins with the acknowledged fact to start the pre-trial investigation, continues in the research, detection, gathering, fixation, examination, evaluation of evidences and goes further in the other stages of the process of decision making in the progress of the case and enforcement of justice.

In comparison of proceedings indicated in the Criminal Procedure Code and CAVL, it can be noticed that in the CAVL sources of evidences (expedients) are more detailed, the wording is as follows: data of administrative law violation can be estimated with these measures: administrative violation protocol; photographs; sound and visual records; testimony of witnesses, explanations of the victims or indictees, conclusions of experts, declarations of specialists, material evidences, protocols of seizure of items or documents and other documents (clause 2 article 256).

In our opinion the list of evidences could be named in the Criminal Procedure Code, and effectively applied in the process of substantiation, whereas certain list of evidences (sources of evidences) is not malady itself, it is rather positive approach. From the perspective of history it is known that the list of evidences was consolidated in the criminal proceedings law of many countries.

If we would recall development of the pre-trial process in the Grand Duchy of Lithuania and ensuing ages likewise customary law the legal norms of the Statutes assigned to the evidences: witness testimony; written documents; material proofs, other imprints and marks.

Posterior prosperous stage of the existence of formally expressed evidences was not the historical error or extraordinary fact of criminal procedures, actually it was more advanced method used in our country and abroad in order to protect individuals from the autarchy of the judges while making decisions.

And present understanding of inner evaluation and conviction in the process can not be interminable, based without particular doctrine of evidence theory, logic, without meanings of credibility, validity, value and sufficiency of evidences.

Verbally expressed evidences (sources) in the legal acts creates more transparent and understandable process of substantiation, since as was mentioned previously in the first two stages of criminal proceedings all involved subjects, must act and make a decisions in accordance with homogenous and universally accepted criteria's. And contrary, miserable ignorance of widely accepted core principals of the theory of evidences on the legislative level originates presumption to emerge negative consequences of criminal prosecution.

While on the subject, here escalated treatment and assessment of evidences, its verbal expression in legal acts practically applicable in only one Criminal Procedure Code, while in the Code of Civil Procedure of the Republic of Lithuania, CAVL and other procedural legal acts the principals of common law apply, there exists application of commonly recognisable conceptions of common law[7].

Therefore the conclusion can be drawn, that the unification of the evidences and substantiation is needed in both Criminal Procedure Code and CAVL, since in the beginning stage of the investigation it is not clear where it can lead, or if there will be applicable requirements of criminal act or violation of administrative law. If the method of unification of evidences would be implemented in the Criminal Procedure Code might fully the logical and rightful concept of evidences and substantiations could be restored.

SUBJECT OF SUBSTANTIATION IN THE APPLICATION OF ADMINISTRATIVE SANCTIONS OR CRIMINAL LIABILITY FOR THE CRIMINAL ACT OR MISDEMIANORS FOR THE ENVIRONMENT

The subject matter of the substantiation is disclosed in the article 256 of the CAVL, where is stated that with respect to the legal requirements, to determine if the misdemeanour

[7] **Ancelis P.** Baudžiamojo proceso ikiteisminis etapas. Monografija. Mykolo Romerio universitetas. Vilnius: Saulelė, 2007, p.147-149

was committed, or the act was not committed; if the individual is responsible for committed misdemeanour, and other circumstances important to the successful resolution of the case.

Otherwise the circumstances of the evidences are more detailed in the article 260 of the same Code on the structure of the protocol (minutes) of the administrative violation, where is stated necessity to fixate evaluation of adequacy of specific section and relation with disposition. Competences to duly fixate protocols (minutes) for the officers responsible for the protection of the environment are listed in the particle 2 of the clause 1 of the article 259 of CAVL.

The subject of the crime committed to the environment can be named as follows: components of all natural environment for which the harm was made, for example: for the ozone layer; air; soil and its entrails; surface waters and underwater; sea waters; fauna; forests and other flora; other microscopic organisms; forbidden kinds of contaminants; radioactive, bacteriological and chemical substances; microbiological and other biological agents and toxins, etc.

In the present Criminal Procedure Code constituents of the subject matter of the substantiation are not disclosed, though in our opinion it could be explained with respect to the following elements: the circumstances revealing if the crime was committed; the liability of an individual; the possibility of the conviction, are the mandatory and must be the subject matter of the proof also other circumstances which may be used in order to retrieve the suspect or accused individual.

In other word in the criminal proceedings and prosecution following goals must be reached and the answers to the following questions should be found: if the crime was planned and committed; who is the suspect; if there is a basis to terminate the investigation; or if there is a basis to transmit the case in to the court. All the recited and other particular circumstances are clarified with respect to the method of substantiation, which is comprehensible as activities performed of all individuals involved in the proceeding; during the evaluation of the evidences, the discovery of the existence of the facts of subject matter of proof can be found.

In our opinion in the beginning of the process investigation can be orientated only by the dependency of the object to the type of crimes. Only after enough evidences were gathered, and the committed act can be determined and qualified with respect to the particular article of the special section of Criminal Code or CAVL, from this moment, the individual

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can be acknowledged as suspect and the compulsory measures to the suspect can be applicable.

Other circumstances, which are not included in the list of goals, should not be taking into account and archived in the files[8]. The circumstances of the substantiation can be characterized as circumstances listed in the general section of Criminal Code, also other circumstances, which describes indicated features of the disposition of the committed act and also circumstances of the features of the particular case.

The essence of the examination of the individual in the process of substantiation is very important and is not less significant than in other forms of prosecution, it has the deciding factor for the fair qualification of the committed act, adaptation of the procedure of the legal norm, tactics of procedural act, measures and other methods of the investigation. The examination of the individual is achievable with the method of collection of biographical data; also it might be advantageous to use independent characteristics. The biographical method is the data collection on the facts of the life of an individual with respect to the chronological sequence or distinct stages of the life, the interrogation of the same individual, his relatives or other related persons can be applied, also as the exercise of other acts of investigation (search; special analysis and expertise, etc.). Not inconsiderable possibilities to investigate the individual can be reached during the verbal contact and vigilant observation of the behavior. The most efficient way to terminate the investigation is to adopt the indictment, the indictment can be drawn only after scrupulous examination of the circumstances. Indictment summarizes the results of investigation and lines the boundaries of the proceedings in the court.

Explaining the circumstances of the substantiation for the crimes committed to the environment it is essential to examine several articles of the Criminal Code of the Republic of Lithuania (Criminal Code)[9] for example article 270 (Violation of the regulations governing environmental protection or the use of natural resources; or constructions where are reserved dangerous substances, or can be found potential dangerous installations, or operating potential dangerous works, violation of the supervision or exploitation regulations). Apparently, it can be seen that the nature of the respective disposition is referring, therefore during the substantiation will be applicable not only the above stated article but also other legal acts and

[8] Ancelis P**.** Funkcijų suderinamumas veiksmingame ir sąžiningame baudžiamajame persekiojime. Mokslo studija. Vilnius, 2012. P.75-76.
[9] Lietuvos Respublikos baudžiamasis kodeksas. Saulelė. Vilnius, 2014.

norms related with the protection of the environment, for example The Law on Environmental Protection, other related regulations. In the said article the object of the crime is environment and safety of ecology, it is the protection of the environment from the physical, chemical and other hazardous effects or consequences arising from the made impact of economic activities or the utilization of natural resources. The subject of these criminal acts is environment and natural resources. Structural elements of the environment can be acknowledged as following: surface of the ground; entrails; air; water; soil; flora; fauna; organic and non-organic substances entirety.

To name it even more precisely the subject of the committed crime to the environment is: forbidden kinds of contaminants; radioactive, bacteriological and chemical substances; microbiological and other biological agents and toxins. Natural resources mean the elements of organic and inorganic nature: flora, fauna, water, soil, etc., which are used or may be used by man in order to satisfy his needs.

The reason to initiate the investigation usually comes from a received notification, complaint of the institutions responsible for the environment protection, of legal entities or other concerned individuals. Following annexes to the complaints are attached: the administrative violation protocol; explanations of individuals; conclusion of specialists (reflecting sequence of the violation; determination of harm; reasons of committed act and others; acts of previously performed inspections, acts on laboratory researches of water, air, soil and other).

From all the above data depends the final conclusion to start or cancel the investigation of committed act. In the primal stages of investigation usually the following actions are applied: the investigation of the crime scene; exaction of documents; analysis of the objects; interrogation of the witnesses; request to provide the conclusions of specialists; examination; and others. For all these and other procedural actions are designated respectable tactic in order to rightfully perform of the actions.

The crime scene could be either industrial, either other territory, dependently from the composition of the criminal act (sea water, other waters, forests and others).

The objective aspect of the crime describes consequences and causal associations between act and consequences.

The violation of the legal norms on the environmental protection or consumption of the resources of the nature can be committed with the active action or inactive, when the duties

stated in the norms are not performed. For example in the Law on Environmental Protection is designated that legal and natural persons wishing run economic activities must individually prepare project documentation on the possible impact to the environment, such project documentation shall be coordinated with responsible officers, that legal and natural persons utilize natural resources with respect to the documentation and not breaching the standards and legal acts designated for the protection of the environment.

In the aforementioned Law is set forth the prohibition to burn the grass, reeds, stubbles or wastes, except conditions when the premise is received to burn these objects in the special repositories.

The footprints of these criminal acts could be named as the reflection of the criminal acts in the conscious of the different individuals or in the material objects; changes in the environment; testimony of witnesses and victims, documentation of the legal persons.

Substantial footprints can be named: polluted waters, other contaminants, explosive subjects and others. It is possible that in some cases there are no appliances or instruments used to perform violate act, and the reason for this is that persons was not in compliance with the set forth legal requirement, as for the others norms of criminal acts characterization of use of mechanical vehicles, planes, explosives, gas, weapons, ammunition, and other instruments.

The Law on Protection of Sea Environment forbids pollution of internal waters and territorial sea, and for the ships, planes and other mechanical construction sets forth prohibition to depose and burn wastes and other substances in the region of Baltic Sea and in the open waters.

The clause 1 of the article 270 of the Criminal Code is applicable if for the violation of the regulations governing environmental protection or the use of natural resources, emerge the threat to the life or health of a large number of people or this could have caused major damage to the air, soil, water, fauna, flora or it could rise other serious consequences to the environment. As was mentioned previously solving out the question on the level of the harm made to the environment is it rather high or not, also solving out if other effects are seriously damaging environment, the focus can not rely only on what was the financial loses or monetary expression of the harm to environment, the focus should be on the nature of trespass of regulation designated for the protection of the environment, on the nature and value of the harm made to ecosystem, on the importance of the objects of the nature and the harm was made on them, on the degree of harm, possibility to restore previous state of the environment,

etc. If these harms are not in question then the individual for the made trespass can be arraign to the administrative responsibility. The victim of the criminal act on the environment can be an individual, on whose health harm was made. The victim can be a person who had a contact with the polluted environment.

The clause 3 of the article 270 of the Criminal Code designates responsibility if for the violation of regulations governing environmental protection or the use of natural resources as stipulated by legal acts, emerged minor damage to the fauna, flora or other negligible consequences to the environment. Many of these acts can be performed with negligence, with a lack of intention to commit a crime. Rrealisation of such crime with an intent can be related with the activities performed by officer or industry, disregarding the procedure established by the law.

The subject of the crime can be the compos mentis person who had attained the age of sixteen years also a legal entity. In the estimation of the responsible person all factors except age do not have significant meaning. First of all the suspicion can be focused on the executive managers or employees of legal entities, officers of official institutions other organisations. The State, a municipality, municipal institution and agency as well as international public organisation shall not be held liable under these crimes.

The subject of the crime committed to the environment can be as follows: components of all natural environment for which the harm was made, for example: for the ozone layer; air; soil and its entrails; surface waters and underwater; sea waters; fauna; forests and other flora; other microscopic organisms. The victim of the criminal act on the environment can be an individual, on whose health harm was made. The victim can be a person who had a contact with the polluted environment. It is possible that in some cases there are no appliances or instruments used to perform violate act, and the reason for this is that persons was not in compliance with the set forth legal requirement, as for the others norms of criminal acts characterization of use of mechanical vehicles, planes, explosives, gas, weapons, ammunition, and other instruments. The crime scene could be either industrial, either other territory, dependently from the composition of the criminal act (sea water, other waters, forests and others). The footprints of criminal acts could be named as the reflection formatted in the material objects; changes made to the environment; utilisation of devises and tools, utilisation of transport vehicles, weapons, fishing tackles, documentation of Companies, substantial footprints: polluted waters, other contaminants, explosive subjects and others.

While applying administrative responsibility for the violations made to the environment the wide variety of circumstances, designated in the CAVL, must be taking into account, all these circumstances generally are set forth in many poor systemised articles of the special section of VACL. Expectantly that in the draft of a new CAVL these misdemeanours, especially designated for the violation of environment will be more clearly distinguished and structured.

CONCLUSIONS

Therefore the conclusion can be drawn, that the unification of the evidences and substantiation is needed in both Criminal Procedure Code and CAVL, since in the beginning stage of the investigation it is not clear where it can lead, or there will be applicable requirements of criminal act or violation of administrative law. If the method of unification of evidences would be implemented in the Criminal Procedure Code might fully the logical and rightful concept of evidences and substantiations could be restored.

While applying administrative responsibility for the violations made to the environment the wide variety of circumstances, designated in the CAVL, must be taking into account, all these circumstances generally are set forth in many poor systemised articles of the special section of CAVL. Expectantly that in the draft of a new CAVL these misdemeanours, especially designated for the violation of environment will be more clearly distinguished and structured.

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ĮRODYMAI IR ĮRODINĖJIMAS TAIKANT TEISINĘ ATSAKOMYBĘ UŽ PAŽEIDIMUS APLINKAI

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Yra sakoma, kad teisingumo menas, yra mokėjimas įrodinėti. Taip pat beveik visuotinai pripažįstama, kad įrodymai ir įrodinėjimas teisiniuose procesuose yra esmė, veiklos svarbiausi pagrindai, o įtvirtintos teisės normose procesinės įrodinėjimo taisyklės (procesinė forma) gali veiksmingai padėti o kartais ir trukdyti įrodinėjimo procesui.

Lietuvos Respublikos aplinkos apsaugos įstatymo 61 straipsnio 1 punkte, “aplinkos” sąvoka apibūdinama kaip gamtoje funkcionuojanti tarpusavyje susijusių elementų (žemės paviršiaus ir gelmių, oro, vandens, dirvožemio, augalų, gyvūnų, organinių ir neorganinių medžiagų, antropogeninių komponentų visuma bei juos vienijančios natūraliosios ir antropogeninės (žmonių sukurtos dėl jų veiklos atsiradusios ar labai pakitusios) sistemos[10].

Nagrinėjant klausimą apie atsakomybę už pažeidimus aplinkai, čia paliesime svarbesnius įrodymų ir įrodinėjimo aspektus tik taikant administracinį ir baudžiamąjį persekiojimą, nors žala aplinkai gali aprėpti civilinę ir drausminę atsakomybę ar reikalavimą atkurti aplinkos būklę ir kt.

Pagrindinės sąvokos: nusikalstamos veikos ir nusižengimai aplinkai; įrodymai ir įrodinėjimas; įrodinėjimo dalykas; baudžiamoji ir administracinė atsakomybė aplinkosaugoje.

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[10] Lietuvos Respublikos aplinkos apsaugos įstatymas. Valstybės žinios, 1992, Nr. 5-75 (su vėlesniais pakeitimais).