

Chapter 2

Slovenian Environmental Policy Analysis: From Institutional Declarations to Instrumental Legal Regulation

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Abstract This chapter identifies and analyses the existence of a comprehensive environmental and security policy (or its fragments) and a security system in the fields of environmental crime and protection of the environment. The chapter also analyses the administrative- and criminal-legal regime of environment protection in the Republic of Slovenia (RS) as a member of the European Union (EU). The study is based on the analysis of the existence and content of strategic documents (declarations, programs, strategies) and the implementing documents (regulations and codes) that define the organisational and functional aspects of state bodies, including those of the national security system, and which should tackle the intentional and unintentional threats to the environment. The study is also based on comparative and descriptive analysis of the *de lege lata* legal system of environment protection in the RS as a member of the EU. The study shows that there have been many sectoral (line) and cross (interdepartmental) approaches and policies (e.g. policy of protecting and conserving the natural environment and space; policy of protection against natural and other disasters; national environmental action programme, etc.) dealing with the question of environment protection (and thus society) in the widest sense. Nevertheless, it is still difficult to identify a single comprehensive and consistent “environmental security policy” that would address how a wide variety of sources and types of threats to the environment are going to be tackled. On the other hand, instrumental legal regulation is divided into two major areas: (1) pollution control and remediation and (2) resource conservation and management. Instrumental legal regulation is often media limited (i.e., it pertains only to a single environmental medium, such as air, water, soil, etc.) and it controls both emissions of pollutants into the medium, as well as liability for exceeding permitted emissions and responsibility for clean-up.

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2.1 Introduction

The great Roman philosopher and writer Seneca once stated: “*If one does not know to which port one is sailing, no wind is favourable.*” (Seneca 2010) and it seems that two millennia later contemporary society, including countries, nations, governments and individuals are still endlessly trying to solve this problem when making important, long-term decisions. If the meaning of consistent decision-making on the level of an individual is in this case set aside, the process in countries and international political-security organisations cannot be ignored. The output of the policy making process always produces a crystallized form of a certain sectoral policy, e.g. foreign, defence, security, economic, etc. Simply stated, there are as many public policies as there are (public) divisions or sectors and problems connected to them, or as Dunn (1994: 70) states: “*Public policies, a long series of more or less related choices (including decisions not to act) designed by governmental bodies and officials, are formulated in issue areas, ranging from defence, energy and health, to education, welfare, and crime*”. In consideration to Seneca’s statement, such policies could also be understood as a form of “rational plan of action” that should lead (in this case – countries, nations, organisations and mankind) to the final goal. This should be eligible even for sample cases when determining national and national-security goals as well as strategies for reaching these goals, which is not always an easy task because the realizations of goals also means a certain sacrifice of the entire society. This is why the decision-makers on the country level (government, parliament, president) must always consider whether the public accepts and supports the goals defined by the security policy and if they don’t, there are two possibilities. Firstly, it should be considered whether the goals can be adjusted in a manner that would still enable political implementation and at the same time be acceptable to the public. If the first is not an option, secondly, the decision-makers are forced to adjust the policy itself (International Military and Defense Encyclopedia 1993).

But what should be done when dealing with a special security unit. The so-called “environmental security” that assumes even the existence of a suitable sectoral policy that also needs to be adequately inserted into the (national)security policy? Indeed, the environment (and consequently the threats that derive from it) is in its relation with decision makers an independent variable, therefore correcting target goals that refer to its security and protection (e.g. stopping environmental destruction and influencing climate change) is not simple and cannot be taken for granted, as it is often the case in the field of “classical” security. When it comes to the environment, the goals are mainly determined from the “outside” (they are solar) and are therefore not strongly influenced by particular states (e.g. governments), which is why it leaves decision makers to deal mainly with policies and policy strategies.

This chapter therefore has a dual intention – to analyse strategic documents (strategies) that the Republic of Slovenia has formulated in the field of environmental security/protection and national security in the past decade and from which it is as well possible to recognize (at least on the declaratory level) an outline of suitable

sectoral policies in this domain (e.g. environmental policy, security policy); and it is intended to be used in the analysis of an actual legal frame of environmental protection that should at least theoretically draw its legitimacy from strategic documents. In this chapter, a method of policy (and legislation) content analysis is used, perhaps the most frequent research approach, despite that the borders among various approaches are not precisely defined and the researchers certainly (even unconsciously) vary among them.¹

2.2 The Environment and Security

2.2.1 *Environmental Protection as Part of (National) Security: A Political Construct or Natural Fact?*

The dilemma exposed in the title will probably seem as a waste or even false to many readers because the environment keeps exposing its “security” component. After all, numerous domestic and foreign authors (see e.g. Homer-Dixon 1994; Homer-Dixon 1998; Levy 1994; Kajfež-Bogataj 2006; Prezelj 2007; Grošelj 2007) have been reminding us about this issue for many years and they have all exposed the meaning of environmental factors in connection to national and international security. Even more – environmental protection is and will remain an element of national security because national security “needs” a natural environment as a context (and relation) where it establishes and ensures the basic functions of social environment. Besides, environmental problems and threats are more easily solved on a group level, even through co-(operation) of national states who still remain the main actors and creators of (national and international) security.

If this is true, then it would be expected that modern states would adjust and harmonise all sectoral policies that deal with different sources of threats. As Malešič (2009) has actually discovered, national security policies and systems based on these policies are only slowly adjusting to the new security-political environment that is (directly or indirectly) defined also by environmental threats. The changes that may be noticed usually do not concern the total national security system but mainly its individual elements. This all leads to a conclusion that the dilemma mentioned earlier is not completely exceeded and that only an accurate analysis of sectoral policies in individual states can answer what may be a rhetorical question at first glance.

¹ Hill (1997: 2) for an example, roughly divided policy analysts into those who are interested only in understanding (the content of) policies (1); those who dedicate themselves to finding answers on how to improve the process of its formation (2) and those who believe that the process of forming and the content are so closely connected that it is not possible or logical to study them separately (3). Hogwood and Gunn (1984: 26–31) identified the following seven different approaches in policy studies within policy analysis: studies of policy content, studies of policy process, studies of policy outputs, evaluation studies, information for policy process, process advocacy and policy advocacy.

2.2.2 National Security Interests and Goals of the Republic of Slovenia

While the physical dimension of human security is fortunately and progressively losing its original meaning in the contemporary world (nowadays, being “secure” means much more than just not being physically threatened), the number and complex sources of threats have on the other hand risen to such significance that it is in most cases impossible to successfully discern, treat, canalise, invigilate or manage them individually, selectively or partially. Accordingly, various security concepts have been developed and are being developed in the past years and decades. All of them contain security as their common denominator, but their operationalization is at its largest extent dependant on the entity or entity ownership that is being asserted.

The concepts accepted, particularly on the state/nation level, are “national security”, “homeland security” and “human security”; the latter being used more and more in recent years. Even though the concepts should not exclude each other, human security seems acceptable for many different entities (states, NGOs, individuals) since it sets the individual, his needs and expectations in the centre of security approaches (Prezelj 2008). Through the prism of “international/global/universal security”, the most successfully established concepts in the international community were “system of collective security” (UN-like) and “system of collective defence” (NATO-like). The mentioned concepts may co-exist in practise; they are not exclusive and they may even function mutually. However, it should be noticed that there is some kind of transition phase occurring, where security concepts originating from security needs, expectations and demands of individuals will proceed towards (superior) group/state entities (“bottom-up” approach) and not vice versa. In connection to the subject of study, an interesting paradox may be recognized. Since environmental threats do not acknowledge national borders, it is only possible to systematically defeat them when collectively-managed, even conducted from the top down, i.e. from national and supranational entities to individuals, being positioned again at the familiar “top-down” approach. The thesis of “transition” must therefore be somewhat relativized!

Slovenia is a small and, in regard to resources (economical, human, financial, etc.), a limited country and is as such especially vulnerable to numerous sources of threats that it may be harmed by. On the other hand, Slovenia is so closely tied up in the international environment (political, economic, security etc.) that it cannot be isolated and immune to the trends and paradigms delivered by the emerging security concepts in the contemporary world. Despite all, the concept of “national security” launched around twenty years ago is very deeply rooted in the Slovenian society, so where security issues in society are concerned, not only are initiatives expected from “the state” (e.g. government) but also management and especially financing certain elements of the national security system, and this just makes a redirection back to the question of existence and the content of the security and environmental policies.

In the past two decades, Slovenia has slowly but reliably consolidated (theoretically) the meaning of national security where it at least in its content (if not also

organisationally) comprehends the security of territorial land, including its air space and territorial waters, the safety of human lives and their property, the preservation and support of national sovereignty and the execution of basic society functions – social, economic, socio-political, cultural, ecological and others (Grizold 1992; Grizold 1999). This is the theory (on a technical or executive level, national security is defined significantly more indirectly) that is recognized in the definition of interests and goals that the Republic of Slovenia desires to exercise in the security field and has addressed these issues in both the current fundamental strategic document on security, *Resolution on the National Security Strategy of the Republic of Slovenia* (Resolucija o strategiji nacionalne varnosti Republike Slovenije [ReSNV-1] 2010) as well as in the previous strategy document issued in 2001. So what will Slovenia strive for and attempt to achieve? *The Resolution* states that the protection and defence of national interests and goals “present the essence in ensuring national security”. National interests are therefore “vital” and “strategic”. According to the *Resolution*, two *long-standing* and *vitaly important interests* of the Republic of Slovenia are “to preserve independence, sovereignty and territorial integrity of the state, and to preserve the national identity, culture and originality of the Slovene people, both within Slovenia’s internationally recognized borders and abroad”. And *strategic interests* mean “acknowledging and respecting the inviolability of internationally recognized borders and state area, including access to open waters through territorial seas, the functioning of a democratic political system, the respect for human rights and basic freedoms, the strengthening of a legal and social state, the well-being of its population and integral social development, the protection of life and a high degree of security of the population in all forms, the preservation and development of Slovenian autochthonous national communities in neighbouring countries, international peace, security and stability and the *preservation of the environment and national sources* in the Republic of Slovenia” (Resolucija o strategiji nacionalne varnosti Republike Slovenije [ReSNV-1] 2010).

Interests should however be carried out by bringing the “*national security objectives*” into effect. They present an “efficient activity of a legal and social state, a high degree of security that is based on appropriate precautions, arrangement and preparedness of all capacities necessary for efficient and timely detection and response to contemporary sources of threats and security risks, *efficient environment protection and preservation of natural sources and assuring strategic sources*, invigorating good relations with neighbouring and other countries, a solid and stable international political-security position of the Republic of Slovenia, promoting peace and strengthening security and stability in the international community” (Resolucija o strategiji nacionalne varnosti Republike Slovenije [ReSNV-1] 2010).

2.2.3 Sources of Threats to the National Security of the Republic of Slovenia with Emphasis on Environmental Threats

Interests and goals are one matter and reality is frequently something completely different. In fact, sources of threats are what determine the security policy and

consecutively, the interests and goals that the state appoints in the field of security (Sotlar 2008).² If anything has significantly changed in the past decade in Slovenia, then it certainly relates to the perception of sources of threats to the national security. Sources of threats may be divided according to several criteria. Very traditional classifications are those between military and non-military sources of threats (criterion of use of armed forces), external and internal (criterion of area), natural and anthropogenic (criterion of threat carriers) or those accordant with either the criterion of emerging form or the content of threat: military, political, societal, economic, environmental, and others. However, analysing and realistically estimating sources of threats is not so simple because at least three levels of perception are being dealt with, *declarative* (those stated in strategic security documents), *perceived* (among the public) and *real* (that frequently occur and are statistically recognized) threats.

2.2.3.1 Declarative (Political) Threats

It's been only ten years since the *Resolution on the National Security Strategy of the Republic of Slovenia* issued in 2001³ (Resolucija o strategiji nacionalne varnosti Republike Slovenije [ReSNV] 2001), which expressed the following sources of threats to be of greatest importance; subversive activity, threats of aggression, military attack, mass migration, terrorism, organised crime, *ravaging of the environment*, economic blockades-including an energy crisis, information of cyber blockades or actions, health and epidemiological threats, natural and other disasters, transnational crime, *ecological risks (chemical, radioactive and other types of pollution and uncontrolled interventions in nature)*⁴ etc.

However, just a decade later, an important shift in the perception of *threats and risks* to the Slovenian national security may be noticed. The perception in this case is limited to a few governmental experts and to the governmental and parliamentary political

² Sources of threats are in a dual relationship when it comes to the state's security policy making. Such a policy on one hand does and must contain them (the policy must answer the question on how and with which resources it will face specific sources of threats that the state is mostly threatened by) and on the other hand, sources of threats in the policy making process function as »a factor of pressure« (the decision makers are influenced by them and cannot ignore them, especially the most realistic and dangerous ones) (Sotlar 2008).

³ Although this strategic document is formally and legally no longer valid, the sources from it are being used because the revised strategy on the national security of the Republic of Slovenia was adopted only in spring 2010 and it probably does not yet have proper implications. Comparing strategic documents of later dates makes declarative sources from 2001 interesting since they expose the transformation of sources of threats from "classical" to "postmodern".

⁴ These ecological risks in a large-scale reflect planetary climatic changes, harmful genetic consequences, animal and plant diseases, food and water of dubious quality standards, and cross-border effects of some ecological disasters (ReSNV 2001).

elite⁵ who worked together in the process of preparing, forming and adopting the new *Resolution on the National Security Strategy of the Republic of Slovenia* (ReSNV-1 2010). The sources of threats and risks are presented and classified in the *Resolution* by source of threat and concerning global, supranational and national levels.

Global sources of threats and risks to the national security are identified as *climate changes* (consequences may already be recognized in a higher number of natural disasters), financial, economical and social risks and critical focal points. *Supranational sources of threats* mainly include terrorism (although currently relatively low), illegal activities connected to conventional weapons, weapons of mass destruction and nuclear technology, organised crime, illegal migration, cyber threats, abuse of informational technologies and systems, foreign intelligence service activities and military threats. *National sources of threats* and risks to the national security mainly concern threats towards public security, *natural and other disasters* (especially earthquakes, flooding, thunderstorms, droughts, extensive fire outbreaks, emerging infectious diseases in humans, animals and plants, road traffic accidents, industrial disasters, as well as disasters that are a consequence of various forms of intentional threatening), *limited natural sources and the degradation of the living environment* (Slovenia depends on the import of power supply and raw materials; because of global warming and environmental pollution it is possible that in the future it will have to deal with problems in supplying qualitative drinking water and providing natural food sources), epidemiological threats and certain factors of uncertainty (mostly poverty, negative demographic movement, negative consequences of globalisation and commercialism, dangers to critical infrastructures).

When it comes to highest strategic documents adopted by the National Assembly of the Republic of Slovenia which have a direct or indirect impact on protecting the environment, at least three more documents need to be mentioned. The *Resolution on the Prevention and Suppression of Crime* adopted in 2006 (Resolucija o preprečevanju in zatiranju kriminalitetne [RePZK] 2006) points out that “the number of crimes connected to the protection of the environment and natural resources is rising and it’s not just a consequence of a higher conscious related to the necessity of environmental protection. Especially problematic are unregulated construction and asbestos-cement waste disposals and an insufficient number of sanitary purifying plants. The environment is burdened by numerous interventions such as illegal excavation where the damage is both ecological and material”. A similar document was adopted a year later, *Resolution on the National Programme of Prevention and Suppression of Crime for the Period of 2007–2011* (Resolucija o nacionalnem programu preprečevanja in zatiranja kriminalitetne za obdobje 2007–2011 [ReNPPZK0711] 2007), dedicating a whole subchapter to environmental protection. The key problems regarding *environmental protection* in the Republic of Slovenia are according to this *Resolution* “extensive dark field in discovering violators,

⁵ It is necessary to point out that elites (politicians, high state officials, influential intellectuals and reporters) have an important impact on forming public opinion because their opinions and standpoints are broadcasted by mass media. Even the field of security and consequently the perception of threat is not an exception (Burk; in Malešič and Vegič 2009: 101).

realistic power (or powerlessness) of punishment, personnel crisis in institutions, general level of environmental consciousness, and mainly uncoordinated or unsuitable functioning in authoritative institutions in different cases of pollution”. The *Resolution* recognizes the causes for these conditions in the following:

- Managing hazardous waste recycling requires proper equipment, qualifications and financial-material funds that are not sufficiently provided by manufacturers of hazardous wastes and other dangerous substances due to a relatively low risk factor.⁶
- Absence of systematic and proactive detection and prevention of crimes and other acts that are dangerous for the environment, space and natural resources.

Finally, there is the *Resolution on the National Programme of Protection against Natural and Other Disasters for the Period of 2009–2015*⁷ (Resolucija o nacionalnem programu varstva pred naravnimi in drugimi nesrečami v letih 2009 do 2015 [ReNPVNDN] 2009). It defines natural and other disasters that present a threat to the Republic of Slovenia, the people, property, cultural inheritance, environment and other goods. The most important disasters influenced by climate changes include thunderstorms with hail and strong winds, floods and avalanches, drought, sleet and other disasters. The security and welfare of the inhabitants of the Republic of Slovenia and of the environment is threatened by environmental disasters and excessive exploitation and destruction of natural resources, health related epidemiological threats and other harmful occurrences. Such occurrences influencing the Republic of Slovenia from overseas are also not excluded. Meanwhile, according to the *Resolution*, terrorism, the use of means and weapons of mass destruction and repeated intensified military sources of threat in the region are less or hardly probable, respectively.

2.2.3.2 Perceived Threats

When it comes to issues regarding the security of the state and its inhabitants, no political decision can be legitimate if it does not (at least to some extent) consider public opinion. The Faculty of Social Sciences (University of Ljubljana) has been performing public opinion research in the field of security (Defence Research Centre). Table 2.1 presents threats to security as perceived by Slovenian residents. Threats/factors that are indirectly or directly connected to the environment are in bold. The results show that the Slovene public believes that some classical sources of threats (e.g. terrorism, military threats of other countries, extreme nationalism,

⁶In a sense that they will be discovered and prosecuted by the state agencies.

⁷The authors are aware that the *Resolution on National Environmental Action Programme 2005–2012* (Resolucija o Nacionalnem programu varstva okolja 2005–2012 [ReNPVO] 2006) is the guiding declarative-political document when it comes to environmental protection but in a sense of sources of threats, therefore the security component, it is not comparable to other classical “security” strategic documents.

Table 2.1 Factors endangering Slovenia's security (*N*=1000)

Threats/Year	1994	1999	2001	2003	2005	2007
Traffic accidents ^a	–	3,21	3,24	3,16	3,12	3,34
Crime	3,14	3,46	3,28	3,28	3,20	3,20
Drugs, narcotics	2,95	3,45	3,41	3,28	3,21	3,17
Degradation of environment	3,17	3,35	3,07	2,91	3,06	3,04
Sell-out of social property	3,01	3,14	2,87	3,06	2,96	3,03
Poverty	–	3,13	3,05	3,08	3,05	2,99
Low birth rate	2,25	3,29	3,00	3,09	3,14	2,98
Unemployment ^a	–	3,35	3,14	3,26	3,24	2,97
Natural and technological disasters	2,80/2,76	3,19	2,76	2,62	2,73	2,85
Suicides	–	3,08	2,88	2,82	2,72	2,74
Economic problems	3,08	3,22	2,99	2,92	2,85	2,69
Refugees, illegal immigrants	2,68	2,98	2,74	2,59	2,49	2,52
Internal political instability	2,89	2,94	2,53	2,59	2,45	2,51
Lagging behind in the field of science and technology	2,66	2,83	2,33	2,47	2,55	2,41
Contagious diseases, AIDS, etc. ^a	–	2,77	2,43	2,21	2,28	2,22
Conflicts on the territory of former Yugoslavia	2,72	2,74	2,09	2,31	2,22	2,15
Extreme nationalism	2,48	2,53	2,20	2,14	2,15	2,07
Terrorism	2,45	2,64	2,09	1,87	1,90	1,91
Military threats of other countries	2,36	2,21	1,79	1,76	1,68	1,70

Note: Table shows average values on the scale 1–4, where 1 means “not at all a threat”, and 4 means “a strong threat”

^aQuestion was not posed (*Source:* Malešič and Vegič 2009: 103, 105)

conflicts on the territory of former Yugoslavia, etc. – all perceived as “weak threats”) are in decline and that much stronger sources of threats that the respondents are dealing with on a daily basis and are presented in the media are traffic accidents, crime, illegal drugs, *degradation of the environment*, poverty, unemployment, and also *natural and technological disasters*. These threats are mostly considered as “medium threats”, some even go as far as estimating them as “strong threats”.

2.2.3.3 Real (Statistical) Threats

Despite the elite's beliefs about which are the highest threats or what the public believes to be true,⁸ the most important sources of threats are those that have

⁸ There is a saying too often true in life: “it doesn't matter what is true, what matters is what others believe to be true”, and this is risky when it comes to security issues. In order to achieve a suitable response to a certain threat where the response will prevent unnecessary victims, the state may through its institutions on the other hand strengthen or mitigate and especially guide certain perceptions that people have. Burk's theory on the elite's influence on public opinion mentioned above is in this sense correct and in such cases also utterly legitimate.

Table 2.2 Environmental crime – police statistics

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
No. of criminal offences	100	133	128	131	155	152	136	137	133	116	145	201

Sources: Resolution on the prevention and suppression of crime (RePZK 2006) and crimes – statistics through 2005–2009 (<http://www.policija.si/index.php/statistika/kriminaliteta>)

actually occurred, therefore actual threats recorded and statistically verified by agencies and services of the national security system. Police statistics may be used when providing a microscopic view of only those threats that illustrate *environmental crime* (officially, these are criminal offences against the environment, space and natural resources), therefore acts of individuals and companies that have intentionally or in negligence caused serious threats to the natural, and consequently to the living environment. Table 2.2 shows the movement of environmental crime activities as recorded by the Slovenian police, in accordance to the Penal Code⁹ of the Republic of Slovenia.

At a glance, a relatively low number of recorded criminal activities against the environment and space (up to 100 in 1998 and up to 201 in 2009) may be noticed, which leads to the conclusion that there is probably a considerable grey field of environmental crime, especially since the environment does not have an “individual owner” that would report each criminal activity to the police. Therefore, including a certain number of pollutions and endangerment cases to the environment that do not contain all signs of criminal activity makes the rose-coloured image of environmental security significantly relativized.

2.3 Towards a Common Environmental and Security Policy?

Now that the national security interests and goals have been recorded and the declarative, perceived and real sources of threats, including environmental threats, described, there will be an attempt to identify the state’s intentions, strategy-ies, policy-ies that should respond to the challenges of security threats and of achieving national security and environmental goals. Keeping this in mind, the third chapter will focus mainly on the following:

- The identification of sectoral policies (environmental, security).
- The identification and (partial) analysis of the basic strategic and directing documents that present the foundation and/or the results of a suitable sectoral

⁹The old Penal Code of the Republic of Slovenia was valid between January 1, 1995 and October 31, 2008 (Kazenski zakonik Republike Slovenije [KZ] 1994), and the new Penal Code has been valid since November 1, 2008 (Kazenski zakonik Republike Slovenije [KZ-1] 2008). Regarding Chap. 32 – Criminal offences against the environment, space and natural resources, the new Penal Code introduces two new criminal offences, further, one is renamed and another one deleted (actually, it is incorporated in another criminal offence).

- policy in the field of environmental security, including prohibited/criminal acts (“environmental crime”) and protection from natural and anthropogenic disasters.
- The nature of connection between the environmental and security policy and possibility/reasonability/necessity of forming of a common “environmental-security policy”.

An example case of work realization within the framework of the environmental policy, manifested through the instrumental legal regulation of environment protection, will be presented in the fourth chapter.

2.3.1 (Fragments of) the National Security Policy of the Republic of Slovenia: Environmental Components

According to the *Resolution on the National Security Strategy of the Republic of Slovenia* (ReSNV-1 2010), the national security policy of the Republic of Slovenia is a “balanced integrity of visions, strategies, programs, plans and activities of the state, required to respond to sources of threats and risks to its national security and thus realizing its national security goals aimed at protecting Slovene’s national interests”. It consists of the foreign policy, the defence policy, the policy of ensuring internal security and the policy of protection against natural and other disasters. “In accordance to the modern multidimensional comprehension of the concept of national security, it also considers the security aspect of the state’s policy in the economical, social, *environmental*, health, demographic, educational, scientific-technological, informational and other areas”. This is an important declaration of the (latest) resolution because the *Resolution on the National Security Strategy of the Republic of Slovenia* issued in 2001 stated that two other public policies – the economic policy and the *policy of protecting and preserving the natural environment and space*¹⁰ are part of the national security policy. In terms of this discussion, the absence of particularly the latter is significantly noticeable.

How can Slovenia then conceive a planned response to environmental sources of threats? In terms of *climate changes*, the Republic of Slovenia will join determined global and universal measures and will by itself “prepare and implement policies to

¹⁰ From the *Policy of protecting and preserving the natural environment and space*: “In order to protect the natural environment as much as possible, the Republic of Slovenia strives for a technologically advanced economy, which will have the least possible negative effects on the environment. All-embracing, timely and coordinated activities of the state agencies, public administration and local self-government will prevent disasters or ensure their rapid and effective consequence management. The measures for environment protection and use of natural goods are aimed at handling the environment problems in the country, with the emphasis on giving the priority to major environment problems. The stress is laid on the enforcement of all environment protection principles defined by law and the inclusion of the environment issues and the principles of development in this area into the programmes of various ministries” (ReSNV 2001).

adjust to climate changes where it will restrict and reduce hazardous consequences and ensure risk management in variable climate conditions. These policies will be based on UN and EU directions and activities and will take into account specific national conditions of the Republic of Slovenia. Within the mentioned organisations, the Republic of Slovenia will strive to conclude an international agreement to mitigate the consequences and accommodate to the climate changes, with a goal to stop the average temperature on Earth from rising. In connection to the development of the high growing technological economy it will strive to attain international standards to reduce hazardous emission in the environment. The Republic of Slovenia will in particular strive to efficiently adapt the whole society to climate changes, with emphasis on interdisciplinary and intersectoral coordinated measures. In the short term, the state will provide priority attention to upgrading early warning systems for extreme weather conditions.” (ReSNV-1 2010).

Regarding the response to *limited natural resources and the degradation of the living environment*, the Republic of Slovenia will consider goals and standards, valid in both Slovenia and EU. Response will be aimed primarily at reducing greenhouse gas emissions, preserving biodiversity, reducing soil pollution, effective water management, improving air quality, reducing the quantity of waste and promoting its recycling and reducing both noise and electromagnetic emissions. In concern for social development, all legitimately declared principles of environment security will be considered, integration of environmental issues and sustainable development principles into programs of other departments will be ensured and the awareness of citizens on the importance of environmental security will be strengthened.

The Republic of Slovenia will strive for the conservation, protection and expansion of existing agricultural land and other resources for food and animal feed production, and it will focus on adapting agriculture to the consequences of climate change. The Republic of Slovenia will provide sufficient supply of key energy resources with proper diversification of supplies. Special attention will also be devoted to greater use of local renewable energy resources and the transition to alternative ones. It will also support peaceful uses of nuclear energy, based on the highest standards of technical and physical security (ReSNV-1 2010).

In managing natural and other disasters, the Republic of Slovenia will strive for a more conformable, efficient and rational development of a disaster management system. More attention will be given to preventive activities, such as earthquake-safe construction, rational land intervention, measures to reduce the effects of hail and drought and fire prevention measures in the most deprived areas in the west of the country. Improved preventive activities will be related to flood protection and protection against avalanches. The Republic of Slovenia will strive to further develop its own capacities to respond to natural and other disasters, taking into account the multiplicative effect of individual sources of security threats and risks. Emphasis will be given on upgrading infrastructure systems, particularly information-communication systems and improving conditions for the functioning of services, units, associations and other non-governmental organisations. The development of forces for protection, rescue and assistance will be based on a modular

structure and be able to adapt in specific circumstances. The Republic of Slovenia will continue to closely cooperate with neighbouring countries, especially in border areas, but will seek to strengthen the civil protection mechanism of the European Union and to jointly provide assistance to EU Member States and other countries. On the basis of international treaties, the Republic of Slovenia will be active in international organizations, mainly in the form of mutual information exchange about dangers and consequences of natural and other disasters, as well as mutual aid in emergencies (ReSNV-1 2010).

The *Resolution on the National Programme of Prevention and Suppression of Crime for the Period of 2007–2011* (ReNPPZK0711 2007) has already been mentioned in the chapter on declarative sources of threats. It's an interesting document because besides stating the causes for conditions in the field of environmental security, it also offers/predicts corresponding solutions. In this sense, there should be an establishment of “planned, coordinated and consistent acting and functioning of authoritative institutions, sufficient information flow between inspecting and persecuting bodies and an elaboration plan for preventing and detecting incriminating acts endangering the environment, space and natural sources”. There should be one single goal to all this – “to improve the efficiency of state bodies and institutions serving the field of environmental security” (e.g. Ministry of the Interior, the Police, Ministry of Defence, Ministry of the Environment and Spatial Planning, Ministry of Justice, autonomous local communities and research institutions).

Of course, these are mere supplements of the security policy, which can be realized only after the adoption and implementation of appropriate legislation – the most important will be mentioned in section 1.3.3.

2.3.2 (Fragments of) the Environmental Policy of the Republic of Slovenia

Although every single individual must (as a “citizen of the world”, if somewhat pathetically expressed) take responsibility of the security and preservation of the environment, the case with sources of threats (which do not recognize state boundaries) is that the most efficient and best way to deal with them is on a group level, a state level in this matter. Therefore, states establish specialized agencies and services that (when provided by law) use repressive approaches to sanction those whose actions intentionally or unintentionally endanger the environment, natural sources and consequently, the living environment of humans and animals. States may protect themselves from sources of threats by either abolishing and preventing them or by reducing their own vulnerability. This is exactly why a “rational plan of action” as mentioned in the introduction is required. Environmental threats cannot be fought only in a repressive-curative manner, which is still typical for classical state security policies, but both, a specific and integral sectoral policy – *an environmental policy*, is required.

Environmental policy may be understood as “a set of principles and intentions, used to guide the decision making process on human management of environmental capital and environmental services” (Roberts 2004: 2), whereas in accordance to this article, the main interest is in managing concealed threats produced (often assisted by a person) by the natural environment that the social environment may only anticipate, plan, be prepared for or fight against. The *Resolution on National Environmental Action Programme 2005–2012* (ReNPVO 2006), the basic strategic document¹¹ in the field of environmental protection “where the goal is a general improvement of the environment and the quality of life and the protection of natural sources”, is certainly in context with Roberts’s definition.

Basic principles and strategic guidelines of the National Action Programme are related to drafting and adopting new legislation and consistent implementation of the existing one; sustainable use of natural resources; inclusion of environmental protection requirements in spatial development planning; integration and consideration of environmental contents in department policies; environmental technologies; promotion of sustainable production and consumption; economic policy for environmental protection; raising environmental awareness, maintaining dialogue with interested parties and public participation; rehabilitation of degraded areas (ReNPVO 2006).

To make this possible, the third chapter of the National Action Programme provides an assessment of the environmental situation in Slovenia in terms of climate changes, nature and biodiversity, quality of life and waste management. Chapter four is the key chapter, it includes objectives and programmes of measures for environmental protection. It actually touches all aspects of the environment and the life in it, including climate changes, preserving biodiversity, monitoring the conditions of forest ecosystems, soil, genetically modified organisms, quality of life, the use, protection and management of water, air and chemicals, noise, electromagnetic radiation, urban development, waste and industrial pollution (ReNPVO 2006).

Who is responsible for implementing the national programme of environmental security? The *Resolution* defines the main actors, namely the state administration, local authorities, public environmental protection services, non-governmental organisations and business and economic entities (Chamber of Commerce and Industry of Slovenia – Environmental Protection Department; Chamber of Crafts of Slovenia). In addition, the state is logically embedded in the international efforts to protect and preserve the environment and the *Resolution* in particular emphasises

¹¹ The National Assembly of the Republic of Slovenia adopted this document according to Article 35 of the *Environment Protection Act* (Zakon o varstvu okolja [ZVO-1] 2004), Article 94 of the *Nature Conservation Act* (Zakon o ohranjanju narave [ZON] 2004), Article 54 of the *Waters Act* (Zakon o vodah [ZV-1] 2002) and in accordance to *Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme*. It’s interesting because the strategic document is being formulated on the basis of Slovenian’s partial, sector legislation and not the other way around! Such practice was realised even in the first *National Environment Protection Action Programme* issued in 1999 (Nacionalni program varstva okolja [NPVO] 1999).

educating, tutoring and providing public awareness as well as supporting public participation in the environmental policy making process (ReNPVO 2006).

At this point, two basic laws on environmental security that co-mark the Slovene environmental policy will not specifically be dealt with, these are the *Environment Protection Act* (ZVO-1 2004) (hereinafter referred to as the ZVO-1) and the *Nature Conservation Act* (ZON 2004). Among other reasons, these acts are also important because they impose certain powers and duties in the field of the security of the environment and nature to individual bodies and services in Slovenia. Together, they shape something that could be called “an environmental security system”, which will be discussed in the next subsection.

2.3.3 A Common Environmental and Security Policy Provides a Common “Environmental Security System”?

Each policy is of course not an end in itself, nor can it be all that successful if it does not establish a proper security system that will possess the appropriate mechanisms and instruments to respond to/prevent threats. If this discussion is transmitted to the field of environment and environment security or even an “environmental security system”, then the political-legal framework of a joint environmental-security policy must first be analysed in order to further identify the key bodies and services engaged in environmental protection in Slovenia.

A few strategic documents concerning the field of national security have already been mentioned so far, crime prevention, protection against natural and other disasters and environmental security. Combining these documents, a rough image of the following is provided:

- Resolution on the National Security Strategy of the Republic of Slovenia (ReSNV 2001)¹²
- Resolution on the National Security Strategy of the Republic of Slovenia (ReSNV-1 2010)
- Resolution on the National Environmental Action Programme 2005–2012 (ReNPVO 2006)
- Resolution on the Prevention and Suppression of Crime (RePZK 2006)
- Resolution on the National Programme of Prevention and Suppression of Crime for the Period of 2007–2011 (2ReNPPZK0711 007)
- Resolution on the Programme for Protection against Natural and Other Disasters for the Period of 2009–2015 (ReNPVNDN 2009)

¹² Although formally no longer valid, the Resolution on the National Security Strategy of the Republic of Slovenia issued in 2001 remains significant since systemic changes are possible only over a longer time period.

The legislation that reflects the “political environmental output” in principle originates from strategic documents. The following are among the most important legal documents:

- Constitution of the Republic of Slovenia (Ustava Republike Slovenije [URS] 1999)
- Environment Protection Act (ZVO-1 2004)
- Nature Conservation Act (ZON 2004)
- Waters Act (ZV-1 2002)
- Management of Genetically Modified Organisms Act (Zakon o ravnanju z gensko spremenjenimi organizmi [ZRGSO] 2002)
- Act on Protection against Ionising Radiation and Nuclear Safety (Zakon o varstvu pred ionizirajočimi sevanji in jedrski varnosti [ZVISJV] 2002)
- Act on the Protection against Natural and Other Disasters (Zakon o varstvu pred naravnimi in drugimi nesrečami [ZVNDN] 2006)
- Fire Protection Act (Zakon o varstvu pred požarom [ZVPoz] 2007)
- Fire Service Act (Zakon o gasilstvu [ZGas] 2005)
- Penal Code (KZ-1 2008)
- Minor Offences Act (Zakon o prekrških [ZP-1-UPB4] 2007)
- Police Act (Zakon o policiji [ZPol-UPB6] 2006)
- Local Police Act (Zakon o občinskem redarstvu [ZORed] 2006)
- Private Security Act (Zakon o zasebnem varovanju [ZZasV] 2003)
- Decree on Obligatory Setting-up of Security Service (Uredba o obveznem organiziranju službe varovanja 2008)
- Defence Act (Zakon o obrambi [ZObr] 1994)
- Service in the Slovenian Armed Forces Act (Zakon o službi v Slovenski vojski [ZSSloV] 2007)

When it comes to protecting the environment and punishing illegal interventions and acts in its regard, the substantive analysis of the mentioned documents exposes a whole variety of terminology concepts. This brings up a logical question on consistency and effectiveness of such (e.g. environmental, security) policy, which is even not consistent in the terminology?

However, on the other hand, political and legal acts indirectly or directly define the subjects within the environmental security system. Here, they can also be divided into either political-decision making ones or executing-operational ones. The most important bodies in the field of environmental security policy are: National Assembly of the RS, Government of the RS, Ministry of Environment and Spatial Planning, Environment Protection Council of the RS, National Security Council, Environmental Agency of the RS, Government Office of the Republic of Slovenia of Climate Changes, Slovenian Nuclear Safety Administration etc.

But, which are the bodies and services who by law deal with the prevention, detection and prosecution of environmental crime and illegal acts and who deals with the damage caused by such acts? In fact, they are found in all three subsystems of the Slovenian national security – the internal security system, the defence system and the disaster management system.

The internal security system is the largest and the most diversified. Practically, there is no entity within this system that would not also have certain duties in the field of environmental security. The most important departments are the Police, the State Prosecutor's Office, various inspection services, municipal warden services, private security services etc.

The defence system consists of the Slovenian Armed Forces and civil defence, while the disaster management system or the system of protection against natural and other disasters includes a large number of national, public and non-governmental bodies, services, organizations and associations:

- *Civil protection* (mainly the Administration of the Republic of Slovenia for Civil Protection and Disaster Relief, units and staffs of Civil Protection).
- *Units and services of associations and other nongovernmental organisations* (voluntary firefighter's associations, Slovenian mountain rescue service, speleological rescue service, underwater rescue service, search and rescue dog units, Scouts Association Slovenia and the Association of Slovenian Catholic Scouts, Red Cross Organisation, Association of Radio Amateurs of Slovenia).
- *Companies, public institutions and other organizations* (professional fire fighting brigades, emergency medical services (medical institutions as part of the public health service); the unit for identifying the deceased (Faculty of Medicine, Institute of Forensic Medicine); the unit for hygienic-epidemiological services (Institute of Public Health); the mobile unit for meteorology and hydrology (Ministry of environment and spatial planning, the Environmental Agency of the Republic of Slovenia); the ecological laboratory with a mobile unit – ELME (the Jožef Štefan Institute and MEEL, organized by the Public Health Association of Maribor); the unit for search and rescue in accidents with chlorine and other corrosive substances (TKI Hrastnik); the rescuing unit in mine disasters (Velenje mine); the Mobile Information Centre, the service for search and rescue in ecological and other disasters at sea).
- *The Police* (especially in providing security, public order and peace and participating in (mountain, traffic) rescue operations by helicopter and other forces).
- *The Slovenian Armed Forces* (in accordance with the law, their structure, fitting and training; particularly its air units, nuclear, chemical and biological defence units, engineering units, medical services and other units).

And finally, no preventive measure of the state and its institutions can be successful in the long term if it is not acceptable to the people, to the civil society. Therefore, raising the security culture and environmental awareness is a prerequisite for successful coping with environmental threats. When it comes to intentional or unintentional nuisance/pollution/threat to the environment, the key in this context is developing a self-restricting attitude in individuals and in the society. The strategic decision of the state, originating in the *Resolution on the National Environmental Action Programme 2005–2012* (ReNPVO 2006) and according to which the public or non-governmental organizations will appropriately cooperate in the environmental policy-making process, therefore seems even more important.

2.4 Instrumental Legal Regulation

2.4.1 *Introductory Aspects of the Instrumental Legal Regulation of Environment Protection*

The instrumental-legal regime of environmental protection under the law of the Republic of Slovenia will be presented below. First of all, a general European and Slovenian constitutional legal platform in environment protection will be defined, followed by an introduction of the fundamental, valid administrative and criminal law regulations in the Republic of Slovenia.

The substantive foundation of contemporary transnational and national regulation of environmental protection in administrative law in democratic societies in the last decades is no longer an anthropocentric perception of nature, i.e. that nature is exclusively subordinate to humans (Greek: *anthropeioi nomos*), but rather a new, ecocentric perception of nature (Greek: *nomos theios*). According to ecocentrism, the centre of legal protection is nature and not the exploitation of nature by humans. In light of the fact that anthropocentrism (i.e. in the sense of exploitation by humans) as a basis for human interaction with nature has led to the damaging and in some places even to the complete destruction of nature, there is no doubt that the ecological reasoning which lies within the anthropocentric perception of nature cannot lead to its protection. Legal protection of nature can only be achieved by establishing an ecocentric foundation in positive law regulation. This direction must also be followed by contemporary national and transnational legislation – Greek *nomos* (Pličanič 1999: 16–30; Kirn 1992: 5–22).

The ecocentric foundation of the regulation of nature has been followed in the last two decades by cogent (Latin: *ius cogens* – compelling law) regulation of European and Slovenian administrative law through the system of positive law (Latin: *ius positivum* – applicable law) institutional and instrumental regulations. The term *institutional regulations* primarily refers to the highest legal acts which establish a value framework for the legal system (Parsons 1978). These are especially the primary European legislation (i.e. the Treaty on European Union – hereinafter referred to as the TEU) and the Constitution of the Republic of Slovenia (hereinafter referred to as the Constitution). The term *instrumental regulations*, on the other hand, refer to national laws and regulations, which implement the value-based aims established at the institutional level in positive law.

The national regulation of environmental protection in administrative law in the Republic of Slovenia is a fairly new legal discipline that has existed and been developing only for the last two decades within the framework of graduate and post-graduate studies at Slovenian universities. Conceptually, this entails studying environmental law, which at the transnational and national levels enacts moderation in activities affecting nature. From the perspective of the primary law of the EU, environmental law is based on the four fundamental principles of environmental protection contained in the TEU. These are the following (the second paragraph Article 174 of the TEU):

1. The precautionary principle (*le principe de précaution, der Grundsatz der Vorsorge*)
2. The principle of preventive action (*le principe d'action préventive, der Grundsatz der Vorbeugung*)
3. The principle of correction at source (*le principe de correction à la source, der Grundsatz, Umweltbeeinträchtigungen mit Vorrang an ihrem Ursprung zu bekämpfen*), and
4. The polluter pays principle (*le principe de pollueur-payeur, das Verursacherprinzip*)

With reference to such, it can be established that all the above-mentioned principles are also in conformity with the Slovenian Constitution, which in Section III, regulating economic and social relations, ensures everyone the protection of a healthy living environment (Article 72 of the Constitution) and the protection of the natural heritage (Article 73 of the Constitution). In this connection, the Constitution also addresses the concepts of national asset and natural resource (Article 70 of the Constitution). With reference to all the above-mentioned constitutionally protected values, the Constitution instructs the legislature to adopt the appropriate national legislation there on. In addition, Article 3a of the Constitution, which was added in 2003 as the basis, and one of the requirements, for Slovenia to join the EU, cannot be neglected. On the basis of this provision the Republic of Slovenia recognizes the supremacy of the primary EU legislation over national legislation in the creation of the national legal order. The above-mentioned principles and constitutionally protected rights are implemented in the Slovenian legal order through national regulations, first of all through the *Environmental Protection Act* (ZVO-1 2004).

However, the ZVO-1 is not the only Slovenian regulation that regulates the environment. There is a whole range, depending on the special regulation which each individual aspect of the environment requires. Slovenian environmental law can, in the broader sense, be divided into five parts related in terms of content (Scripta UL PF No. 35 2008, pp. 166–168), namely: (1) the legal regulation of natural assets and the conservation of biotic diversity, (2) the legal regulation of water management, (3) the legal regulation of mineral matters management (non-renewable natural resources), (4) the legal regulation of wild animal management (hunting and fishing), and (5) the legal regulation of forests and barren land management.

This chapter does not deal with specific and special regulations. It can be mentioned, however, that for a profound understanding of the structure of the national legal order in the field of environmental law, the rule *lex specialis derogat lex generalis* must be applied. This entails that in the event of a collision of statutory rights and obligations, when two laws regulate the same legal relation, the regulation of the law which is more specialised – in the sense of Latin *lex specialis* – prevails. The ZVO-1 is a general regulation. In individual specific environmental law fields, the regulation determined in special regulations will thus prevail, in as much as they regulate specific environmental relations in a specific and special manner.

The central term of modern environmental law is the subjective law of persons subject to environmental law – their *legal rights and duties*. They are based on the

general constitutional right of individuals to a healthy living environment. This is a general right which is followed by special rights and duties regulated by special laws in accordance with the principle of speciality. The right is in general a legally protected entitlement (Latin: *facultas agendi*) that a legal subject can act in a certain manner. The right is composed of two entitlements, namely of a fundamental entitlement and a claim. A fundamental entitlement enables subjects to fulfil their own interests if in compliance with the legal aim of the entitlement. A claim, on the other hand, contains the possibility that the state will impose a coercive sanction in the interest of the subject if another subject does not act in compliance with the obligation. The right thus contains, on one hand, an entitlement of one subject, and, on the other hand, the duty or obligation of another subject. Therefore, from a broader perspective (e.g. in interest-volition theory), a legal right is both – a right and a duty entitlement of the legal subject (Leksikon Cankarjeve Založbe: Pravo 2003: 264).

In what manner administrative law rights and the duties of subjects to environmental law are implemented in accordance with the Slovenian ZVO-1 will be discussed below. At the next point, focus will be drawn to the question of environmental protection consent as an individual administrative act and through this, the regulation of the supervision of state authorities regarding violations of administrative law statutory provisions from the field of environmental protection.

2.4.2 Environmental Protection Consent in Administrative Law in Slovenian Legislation

The environmental protection consent is a central concrete and individual administrative act that every entity responsible for a planned activity must obtain in accordance with Slovenian legislation (Article 57 of the ZVO-1). In order to operate an installation or plant where any activity that might cause large-scale environmental pollution will be carried out, the operator must obtain an environmental protection consent. However, the ZVO-1 introduces various types of environmental protection permits which differ in the scope of the requirements that must be fulfilled in order to be obtained, in the time limits for issuing the permit, and in the participation of the public; all types of permits are, however, issued by the Ministry of the Environment and Spatial Planning or its affiliated body, i.e. the Environmental Agency of the Republic of Slovenia (hereinafter referred to as the EARS). An environmental protection permit must be obtained prior to the beginning of the operation of the installation or plant and for every substantial change in the operation of an installation or plant. A substantial change in the operation is: (1) any change in the installation or its extension that modifies any principal technical characteristic of the installation or its capacity, which as a consequence causes a change in the quantity or type of emissions into the environment or the waste for which the environmental protection permit was obtained, (2) a considerable increase in the quantity of a hazardous substance, (3) a significant change in the chemical or physical properties of a hazardous substance, or (4) any other change in the technological

process in a plant where a hazardous substance is used. An environmental protection permit must be obtained in three instances (Viler-Kovačič 2006: 6–7), namely:

1. For installations that may cause *large-scale* pollution, i.e. installations subject to the IPPC Directive. The abbreviation derives from the title of the EU directive, namely Council Directive 96/61/EC Concerning Integrated Pollution Prevention and Control or abbreviated as the IPPC Directive. This directive regulates IPPC installations.
2. For other installations that do not cause large-scale pollution (installations determined in Article 82 of the ZVO-1):
 - (a) If an activity is pursued in these installations that causes emissions into the air, water, or soil for which limit values are prescribed.
 - (b) If an activity is pursued in these installations for which the obligation to obtain an environmental protection permit is prescribed in other regulations.
 - (c) If in these installations waste is treated or disposed of.
3. For installations that pose a major environmental risk.

Pursuant to the ZVO-1, an installation is any stationary or mobile technical unit for which it has been established that it may cause environmental burden as a consequence of one or more specified technological processes taking place in that installation, and of any other technology-related processes taking place at the same site (item 8 of Article 3 of the ZVO-1). In accordance with the same Act, a plant is defined as the entire area managed by one operator where there are one or more installations, including the accompanying or associated infrastructure and technological processes related thereto, in which hazardous substances are produced, stored, or used in any other way (item 9 of Article 3 of the ZVO-1).

In what manner European legislation is applied at the national level will be demonstrated through the case study of the application of the Seveso Directive into the Slovenian ZVO-1 (Viler-Kovačič 2006: 6–7):

CASE STUDY: A particularity of the environmental protection permit in the Slovenian legal system is also the transposition of the Seveso European Directive for plants into the ZVO-1 (see Article 86 of the ZVO-1). The Council of the European Union adopted the Seveso Directive (i.e. Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances) following a major accident in Seveso in Italy in 1976, when several kilograms of dangerous dioxin was suddenly and uncontrollably released from the chemical plant and contaminated more than 15,000 m² of land and vegetation. As many as 2000 people were treated for dioxin poisoning and more than 600 had to be evacuated from their homes (EC 2010).

The above-mentioned directive was transposed into the ZVO-1 through the requirement that when operating a plant, the person posing a risk to the environment must implement the prescribed measures for the prevention of any major accident and for the mitigation of consequences there from for humans and the environment, and in particular draw up a scheme for the reduction of environmental

risk and a safety report. A person posing the risk to the environment must obtain an environmental protection permit for the plant, which is named an environmental protection permit issued in accordance with Article 86 of the ZVO-I or a Seveso permit, in order to distinguish it from other environmental protection permits.

Operators of such plants are termed persons posing a risk to the environment, whereas a risk to the environment in accordance with the ZVO-I entails the probability that in certain circumstances or within a certain time interval an activity would harm, directly or indirectly, the environment, or human life or health. The measures that the plant operators must undertake for the prevention of major accidents and the mitigation of their consequences for humans and the environment as well as safety measures connected therewith which plant operators must meet, are regulated by the Government Decree on the Prevention of Major Accidents and the Mitigation of their Consequences (*Uredba o preprečevanju večjih nesreč in zmanjševanju njihovih posledic* 2005). Pursuant to this Decree, plants are divided into plants posing a lower risk to the environment and plants posing a greater risk to the environment, regardless of the type and quantity of hazardous substances that are in the plant. A formula for the assessment of a plant posing a lower risk to the environment and posing a greater risk to the environment is provided for in the annex to the Decree.

In the procedure for issuing the environmental protection permit, the EARS must make the permit application and the draft decision on the environmental protection permit available to the public. The provisions that apply to entities subject to the IPPC Directive apply, *mutatis mutandis*, regarding the participation of the public. The time limit for issuing a permit is three months from receiving a complete application.

The environmental protection permit stipulates in detail measures for the prevention of major accidents and the mitigation of their consequences for humans and the environment; the environmental protection permit is issued for a period of five years from the day of the beginning of the operation of the plant (and not from the day this administrative act takes effect). In the event that it is assessed that the consequences of a major accident in a plant could have an impact on the environment of another state, or when the latter so requests, the competent authority of that state is to be informed of the environmental protection permit issued. If on the basis of such information another state so requests, it must be forwarded the safety report of the plant in question.

Such environmental protection permits may also be extended, updated, or withdrawn under the conditions and in the manner determined by the ZVO-I (2004).

2.4.3 Administrative Supervision of Environment Protection in Slovenian Legislation and Practice

Administrative, particularly inspection, supervision is one of the administrative functions of the state that ensures supervision of the implementation of the adopted legal order and provides feedback so that administrative bodies can learn of the effects of

the adopted regulations and introduce appropriate modifications and measures. The coercive nature of inspection tasks ensures that addressees of legal norms respect regulations, whereas at the same time these norms protect the rights and legal benefits of individuals that were recognized to them by laws and other regulations. Inspection supervision is thus supervision of the implementation of laws and other regulations. The tasks of inspection are performed by inspectors as officials with special authorisations and responsibilities (Likozar-Rogelj 2006: 16–17).

If an environmental inspector establishes that a person liable for the operation of a plant or installation does not have the necessary environmental protection permit, he or she does not instruct the person liable to obtain such a permit, as the author of the above cited article erroneously thinks, but prohibits the operation of the installation or plant if it is operating without an environmental protection permit (see item 6 of the first paragraph of Article 157 of the ZVO-1). As the legislature determined that the operation of a plant or installation without obtaining a prior environmental protection permit is prohibited, it provided for the imposition of sanctions; a legal entity may impose a fine in the amount of €1,200 to €360,000. Due to the fact that the amount of the prescribed sanctions that can be imposed is high, accelerated minor offence proceedings are not allowed (Likozar-Rogelj 2006: 16–17).

It proceeds from the above-mentioned that inspectors must respect the principle of legality when performing their tasks. They supervise whether the adopted legal regulations are respected and take appropriate measures in cases of violations of the regulations. The repressive nature of inspection tasks is demonstrated solely through measures which inspectors are obliged to impose (*ex-offo*) if they establish that the legal order is not respected.

In 2006 the Inspection Act (Zakon o inšpekcijskem nadzoru [ZIN] 2007) (hereinafter referred to as the ZIN) introduced an amendment that authorises inspectors to apply preventive measures (Article 33 of the ZIN) which concretise the principle of the protection of the public and the private interests in order to ensure that the regulations are respected. Inspectors can only issue a warning if they find irregularities when performing their inspection tasks and assess that such is an appropriate measure regarding the seriousness of the violation. They also determine a time limit in which the irregularities must be remedied. If the irregularities are not remedied, inspectors impose other measures in accordance with the law. The above-mentioned discretionary right of inspectors importantly influences the preventive action; in light of the seriousness of the violation, inspectors assess that a warning will suffice and that the person subject to inspection will respect the norms of the regulation and perform the omitted prescribed obligation or remedy the violation which they have caused with their operation. If, however, inspectors establish that after a warning has been issued, a person subject to inspection does not respect the imposed measure, they are to impose other, graver measures prescribed by law. A person subject to inspection is obliged to remedy the irregularities or deficiencies within the determined time limit. If they do not do so themselves, the inspectors force them to remedy such proceedings with the execution carried out by a third person or by a fine. Inspectors thus do not only impose measures, but also ensure that such measures are implemented (Likozar-Rogelj 2006: 17).

2.4.4 *Environment Protection in Slovenian Criminal Law*

Slovenian criminal law is Slovenia's national law and is specific for the Republic of Slovenia. The primary function of the Slovenian criminal law is the protection of the Slovenian society from the most serious forms of deviant behaviour in all spheres of social life. The latter is realized through substantive and procedural criminal law through the specific and general precautionary principle. This is how the Slovenian criminal law contributes to the strengthening and development of the social consciousness, providing social harmony in the Republic of Slovenia as a whole and as part of the European Union and an integral part of the global human community.

In the most successful and acceptable manner, the Slovenian criminal law reinforces the social consciousness of the moral unacceptability and danger of those social actions that apply to *lat: mala in se* (evil in itself). Socially less acceptable are offenses that are presented in the national criminal law as *lat: mala prohibita* (positive-legal prohibited acts). The moral and ethical significance for these offenses has not yet solidified in the social consciousness, and such acts are not yet evil in themselves (Dežman 1993: 22).

Regarding the phenomenon of *ecocentrism* – in contrast to the previous principle of *anthropocentrism* – in law and the actual crisis of the environment, it may be concluded that the illusions of nature's inexhaustibility and indestructibility are lost. Imbalance between man and his natural environment raises the categorical request of respecting ecological rules. This means that threatening or destroying natural assets present proceedings that completely reveal their negative moral and ethical foundation.

Therefore, a criminal justice intervention in the area of limiting ecological crisis has all its moral and ethical justification. Acts against natural resources today are no longer just *lat: mala prohibita*, but increasingly subject to *lat: mala per se*. In the Penal Code (KZ-1 2008), the Slovenian criminal law has developed a precise and clear legal description of criminal acts which ensure an adequate interpretive scheme for judicial review.

The offenses against the environment are classified in the criminal code predominantly under *Criminal Offences against Environment, Space and Natural Resources* in Chap. 32. Given the positive legal system, the act of crimes against the environment in the Slovenian criminal law may be classified in the manner shown in Table 2.3.

A quick overview of the current criminal justice protection of the environment in the Republic of Slovenia suggests that criminal law may also be a means of the society to overcome environmental difficulties. Its application requires such a preventive system that it can distinguish between environmental-harmful events and coincidences. It must be taken into account that most of the acts at debate are committed in difficult circumstances; therefore, it is reasonable to raise the question of the possibility of a precise criminal justice evaluation. It is also in the domain of competent national authorities for them to, in joint efforts, ensure higher effective security of the environment in the Republic of Slovenia. Legally, they have sufficient instruments of repression available.

Table 2.3 Criminal offences against environment, space and natural resources in penal code of the Republic of Slovenia

Article No.	Criminal offence	Punishment
332	Burdening and destruction of environment and space	 shall be punished by imprisonment of up to five years
333	Sea and water pollution by ships	 shall be punished by imprisonment of up to five years
334	Import and export of dangerous substances into the country	 shall be punished by imprisonment of up to five years
335	Unlawful acquisition or use of radioactive or other dangerous substances	 shall be punished by imprisonment of up to five years
336	Pollution of drinking water	 shall be punished by imprisonment of up to three years
337	Tainting of foodstuffs or fodder	 shall be punished by imprisonment of up to three years
338	Unlawful occupation of real property	 shall be punished by a fine or by imprisonment of up to one year
339	Destruction of plantations by a noxious agent	 shall be punished by a fine or by imprisonment of up to two years
340	Destroying of forests	 shall be punished by imprisonment of up to one year
341	Torture of animals	 shall be punished by a fine or by imprisonment of up to six months
342	Game poaching	 shall be punished by a fine or by imprisonment of up to six months
343	Fish poaching	 shall be punished by a fine or by imprisonment of up to one year
344	Illegal handling of protected animals and plants	 shall be punished by imprisonment of up to five years
345	Transmission of contagious diseases in animals or plants	 shall be punished by a fine or by imprisonment of up to one year
346	Production of injurious medicines for treatment of animals	 shall be punished by a fine or by imprisonment of up to one year
347	Unconscientious veterinary aid	 shall be punished by a fine or by imprisonment of up to one year

2.5 Conclusions

In the last decade, many sectoral (line) and cross (interdepartmental) approaches and policies have been formed (e.g. the policy of protecting and conserving the natural environment and space; the policy of protection against natural and other disasters; the national environmental action programme, etc.) and they all deal with the question of environmental protection (and thus society) in the widest sense. Nevertheless, it is still difficult to identify a single, comprehensive and consistent security policy that would address how a wide variety of sources and types of threats to the environment will be tackled. In this context, the strategic and operational documents describe environmental crime as a specific (intentional) source of threat

that receives relatively little attention, although many environmental threats (e.g. anthropogenic disasters) may be a result/outcome of intentional human acts or omissions. In this context, it is interesting (and concerning) that the Resolution on National Security of the Republic of Slovenia adopted in 2010 no longer classifies the *Policy of protecting and preserving the natural environment and space* as part of the national security policy framework, as it did since 2001. If nothing else, it's a symbolic significance, since strategic documents that deal with environmental security dedicate a great deal of attention to environmental threats (e.g. to those that are derived from climate changes) but while facing these and similar threats they don't clearly define a sectoral policy or a kind of an "environmental security policy"!

On the other hand, instrumental legal regulation is divided into two major areas: pollution control and remediation; and resource conservation and management. Instrumental legal regulation is often media-limited – i.e., it pertains only to a single environmental medium, such as air, water, soil, etc. – and it controls both emissions of pollutants into the medium, as well as liability for exceeding permitted emissions and responsibility for clean-up.

Finally, here are a few more or less rhetorical questions which may also require scientific verification, namely:

- Can climate changes, natural disasters, environmental threats and risks truly even be a matter of nations, regions, and the world if they, in their final consequence, mainly concern the individual?
- What are (on the other hand) atomized individuals of the society able to do on their own in preventative and curative purposes without activity coordination on a group – i.e. state level?
- Are existing security systems and concepts even capable of transformation which will allow the institutionalization of the concept of human security?
- Should the matter of a national security policy in particular stand for penalizing violators of environmental laws (as a "general prevention") and for sanitizing natural and other, even ecological disasters etc. or should it also, and above all, be a preventive activity in terms of promoting individual and corporate "environmental awareness" and providing successful environmental security practices?
- And last but not least, as a country, will Slovenia only "respond" to (threats and risks, policies, requirements and expectations of the EU and UN, etc.) or will its policies and strategies be proactive, initiative and anticipative?

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