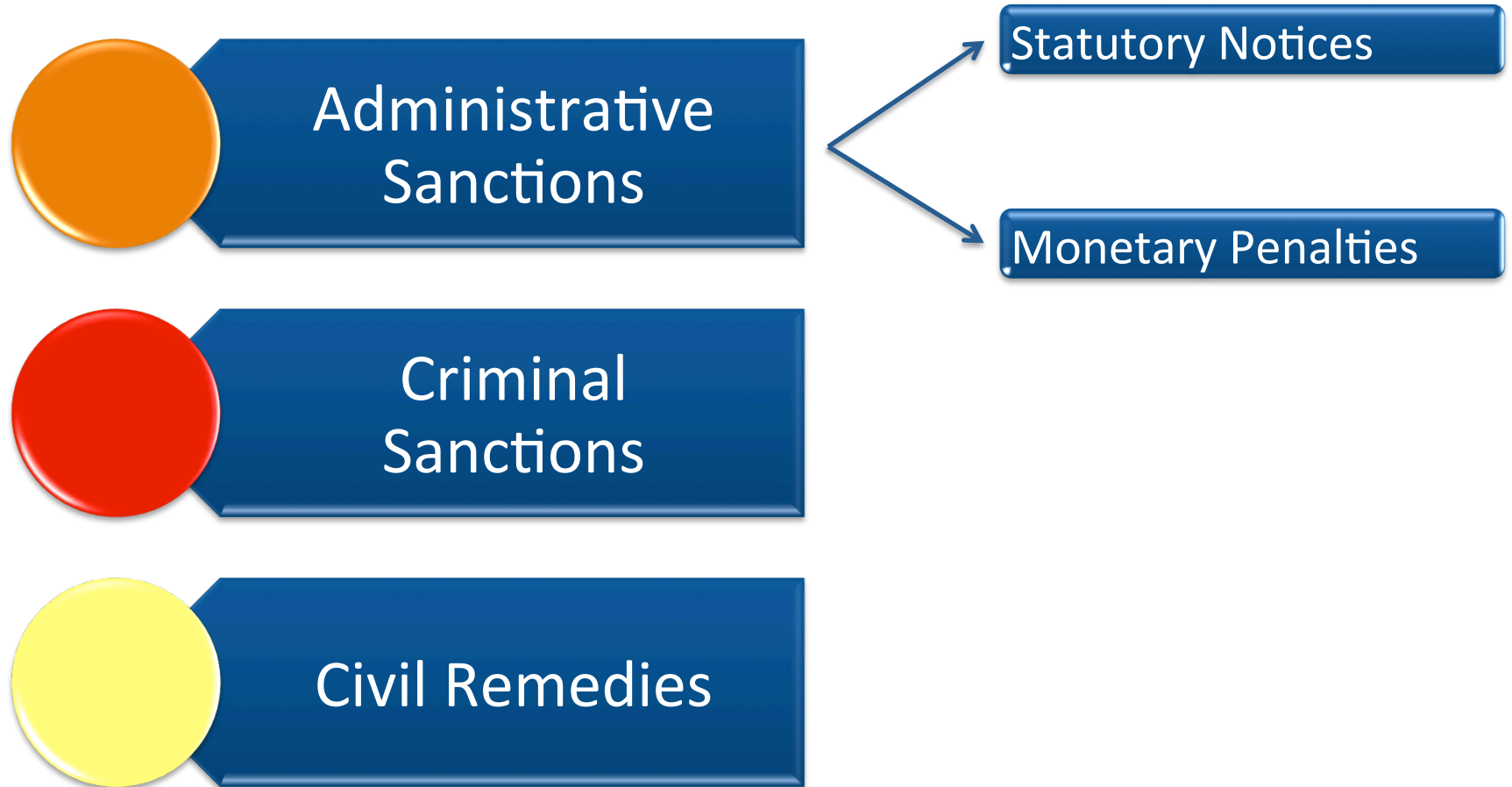


Environmental sanctions in Italy

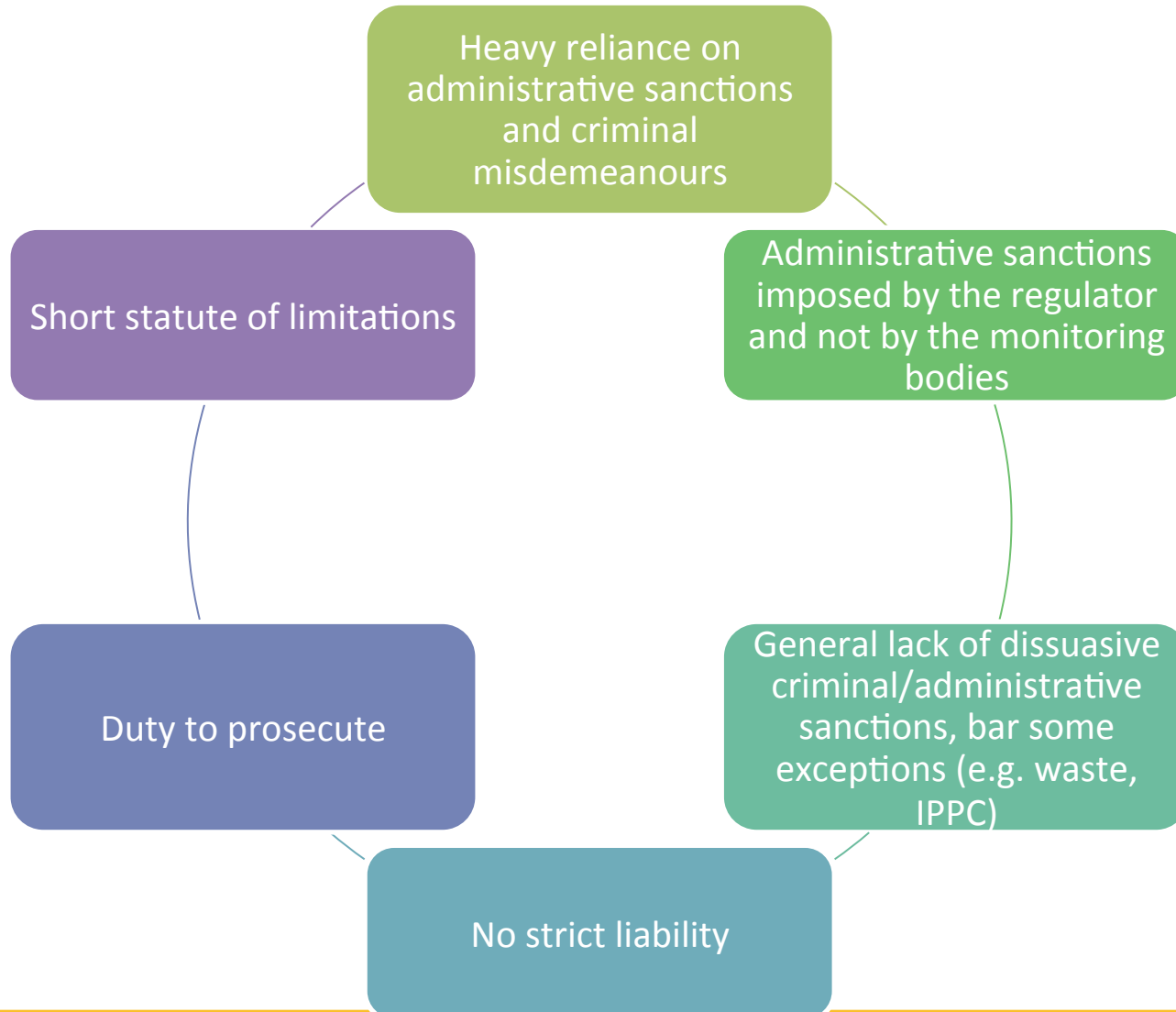
**Effective Environmental Enforcement
Conference in Honour of Richard Macrory**

Edward Ruggeri

Sanctions and regulatory toolkit



Key characteristics



Administrative Sanctions - Statutory Notices

In the event of a breach of an environmental permit's prescriptions, the competent Authority, depending on the seriousness of the breach, may:

- issue a formal warning, together with a term within which it is necessary to eliminate the breaches and implement preventive measures;
- issue a formal warning and simultaneous suspension of the operations;
- revoke the permit and impose shutdown of the installation, in case of breach of the prescriptions imposed with the formal warning or in case of repeated breach of the permit entailing risk or damage of the environment.

These sanctions apply without prejudice of the administrative and criminal sanctions (see next slides).

Administrative Sanctions – Monetary Penalties

- Long tradition of variable administrative monetary sanctions, as opposed to criminal sanctions;
- Regulator retains discretion as to the determination of the monetary penalties;

Benefits:

- fast track inquiry procedure, carried out by competent officials;
- source of revenue for the administration;
- stringent terms for appeal, in front of expert sections of the competent Courts.

Weaknesses:

- not perceived as a strong deterrent;
- Inherent incapability of the administrations to monitor compliance;
- Lack of transparent enforcement policies.

Criminal Sanctions - Overview

1930 Criminal Code did not contain provisions aimed at directly protecting the environment;



Starting from the 1960s, sectorial legislation (e.g. antismog, industrial discharges, marine environment, waste) qualified breaches of environmental requirements as misdemeanours;



The 2006 Environmental Act substantially maintains the previous misdemeanour approach;



Due to increasing environmental awareness and EU obligations:

- (i) case law has interpreted the existing provisions of the criminal code extensively;**
- (ii) partial implementation of Directive 2008/99/EC (e.g. administrative responsibility for enterprises in relation to certain crimes, integration of the Criminal Code with some new environmental crimes).**

Criminal Sanctions – characteristics & criticalities 1/2

The sanctions mainly punish:

- Breaches of a permit;
- Exceedance of the emission limit values.

Characteristics:

- Proof of negligence or malice;
- Danger of damage.



easier for the Judiciary to ascertain the crimes

Criminal Sanctions – characteristics & criticalities 2/2



Lack of a strong and clear criminal sanctions regime:

- Common crimes not expressly regulated (e.g. environmental disaster);
- Criminal sanctions dislocated in various uncoordinated sectorial provisions.



Poor deterrent effect, given the:

- long and cumbersome criminal proceedings, coupled with a short statute of limitations entail that often the crimes are declared extinct before closure of the proceedings;
- possibility to extinguish the crime through payment of a fine;
- only major deterrents are the measures the judiciary can issue during the criminal proceedings (e.g. seizure of the activity).

Criminal Sanctions – possible way forward

New draft law on environmental crimes currently under discussion in Parliament

- ✓ Integrates the Criminal Code with a new section on environmental crimes;
- ✓ Introduces the felonies of environmental pollution and disaster, trafficking of radioactive substances;
- ✓ Establishes that the applicable sanctions may be reduced for the operators that collaborate with the authorities before completion of the criminal proceedings;
- ✓ Obliges the convicted felons to restore the areas to their pristine state;
- ✓ Establishes a longer statute of limitations.

Civil Remedies

- The Environment Ministry retains exclusive authority to present environmental damage claims also before civil courts;
- The claim is brought to oblige the polluter to actually restore the areas to their pristine state or, if necessary, to obtain monetary compensation (residual option);
- The Environment Ministry typically drops litigation if a settlement is agreed upon concerning restoration of the area and the modalities for carrying out the clean-up activities.

Thank you