

Anita NAGY*
The protection of water through criminal law**

Abstract

One of the greatest environmental challenges of the future is to adequately meet water needs and to address water-related environmental problems. It is the duty of the state and the citizens to conserve and protect Hungary's rich natural resources and water resources, taking into account the interests of future generations. Changes to the relevant legal environment in recent years have created the necessary legal conditions: from the provisions of the Fundamental Law to the Criminal Code, the rights and obligations related to the protection of the environment and nature have broadened considerably. Water protection is a complex activity in which actors from different jurisdictions play a significant role and the most serious infringements are penalized by criminal law. However, criminal law in this respect should also primarily promote the protection of waters and their wildlife by means of prevention. In criminal justice, compliance with the most important environmental protection objective – prevention – should be borne in mind, both through generic and special prevention.

Keywords: protection of water, criminal law, Hungarian Criminal Code, water law

The fundamental principles of environmental law in Hungary are laid down by the Act LIII of 1995 (hereafter referred to as: 'Kvt.'). However, in cases where greater damage or threat is actually being done, determining administrative or civil liability is not enough. In such cases, penal sanctions as a last resort, that is to say, as '*ultima ratio*' are also needed in order to protect citizens and the society. According to Paragraph 2 of Article XXI of the Fundamental Law: "*Anyone who causes any damage to the environment shall be obliged to restore it or to bear all costs of restoration, as provided for by an Act.*" As far as criminal policy is concerned, there is a much greater social interest in protecting the environment than in imposing a specific punishment.

Articles 191-193 of TFEU are the primary legal basis for environmental protection. According to Paragraph 2 of Article 191: "*Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.*"

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Our environmental law enforcement is characterised by the fact that both the Act on Environmental Protection and the Act on Nature Conservation provide for the possibility of parallel empowerment. Therefore, fines imposed by administrative authorities do not exempt the person causing danger or damage from criminal, administrative or civil liability, and the authorities, on the other hand, may impose prohibition or obligations as well. The most serious environmental law violations constitute an offence.

Pursuant to the decision 28 of 1994. (V.20.) of the Constitutional Court, the right to a healthy environment also implies the State's obligation not to reduce the level of the protection provided by nature conservation acts, unless such a reduction is unavoidable in order to enforce other fundamental right or constitutional value.

As far as criminal protection of the environment is concerned, current Hungarian law has been significantly affected by EU legislation. In this respect, the Council Framework Decision 2003/80/IB has to be mentioned primarily.¹ Pursuant to Article 2 of the Framework Decision: each member state shall take the necessary measures in order to ensure that certain actions damaging to the environment shall be regarded as criminal offenses under its domestic law. Such actions include, among others: (a) the emission of substances or ionizing radiation which cause death or serious injury to any person; (b) the unlawful treatment or storage of waste; (c) the unlawful manufacture of nuclear materials; (d) the unlawful possession, taking, damaging, killing of wild fauna and flora species, at least where they are threatened with extinction as defined under national law.

Following the adoption of the framework decision, the Commission of the European Union had recourse to the European Court of Justice, which annulled the Framework Decision 2003/80/IB for formal reasons on 13 September 2005 but maintained European Union provisions on content as they were.²

Furthermore, it is important to refer to the European Union's Directive 2008/99/EC on the Protection of The Environment Through Criminal Law which Hungary had to transpose into national legislation by 26 December 2010. The Section 249 of the Criminal Code, amended by the Act CLXI of 2010, regulates criminal offences with ozone-depleting substances. It is important to highlight that the Directive 2008/99/EC criminalises the illegal operation of a plant in which a dangerous activity is carried out or in which dangerous substances or products are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.

The Act IV of 1978 on the Criminal Code which lapsed on 30 June 2013 (hereafter referred to as: old Btk.) also included environmental offenses in the strict sense of the term. Chapter XVI entitled 'Crimes against Law and Order' contained those offenses under Title IV entitled 'Crimes against Public Health', which regulated Damaging of the Environment (Section 280), Damaging the Natural Environment (Section 281) and Violation of Waste Management Regulations (Section 281./A).

¹ See also more precisely: Görgényi 2011.

² Görgényi 2015, 283.

However, several sections of the Criminal Code included facts forming part of environmental offenses in the narrower sense, such as Misuse of Radioactive Substance, Public Endangerment, etc.

The rules of the Act C of 2012, which entered into force on 1 July 2013, (hereafter referred to as: Btk.) provides a more rational system of those environmental offenses which have the same legal object by placing them under the common chapter XXIII. Thus, it expresses the growing need for an autonomous protection of the environment as opposed to the protection of public health, which was previously in force.

The Act C of 2012, which entered into force on 1 July 2013, (hereafter referred to as: Btk.) details the rules of criminal law protection in Chapter XXIII on Criminal Offenses Against the Environment and Nature.

The crimes under this chapter: (a) Environmental Offenses; (b) Damaging the Natural Environment; (c) Cruelty to Animals; (d) Poaching Game; (e) Poaching Fish; (f) Organization of Illegal Animal Fights; (g) Violation of Waste Management Regulations; (h) Criminal Offenses with Ozone-Depleting Substances; (i) Misappropriation of Radioactive Materials; (j) Illegal Operation of Nuclear Installations; (k) Crimes in Connection with Nuclear Energy.

These crimes, in particular, Environmental Offenses, Damaging the Natural Environment, Poaching Game, Poaching Fish but other crimes harming the environment are *typically* part of *framework legislation* which does not set out completely clearly the illegal conducts but only lays down the frameworks which are imbued with content by other acts.

1. The Protection of the Wildlife of Waters Through Criminal Law

Environmental Offenses, Damaging the Natural Environment and Poaching Fish provide for an adequate level of protection, functioning as *ultima ratio*, but Violation of Waste Management Regulations, Misappropriation of Radioactive Materials and Illegal Operation of Nuclear Installations clearly protect our waters against irregular conduct by means of criminal law.

1.1. Environmental Offenses

Section 241, Btk. „(1) Any person responsible for the pollution by any means of the earth, the air, the water, the biota (flora and fauna) and their constituents, resulting: (a) in their endangerment; (b) in damage to such an extent that its natural or previous state can be restored by way of intervention only; (c) in damage to such an extent that its natural or previous state cannot be restored at all; is guilty of a felony punishable by imprisonment not exceeding three years in the case of Paragraph a), by imprisonment between one to five years in the case of Paragraph b), and by imprisonment between two to eight years in the case of Paragraph c). (2) Any person who damages the environment through negligence shall be punishable for misdemeanor by imprisonment not exceeding one year in the case of Paragraph a), by imprisonment not exceeding two years in the case of Paragraph b), and by imprisonment not exceeding three years in the case of Paragraph c). (3) In the cases provided for in Paragraph a) of Subsection (1) and in the first and second phases of Subsection (2) the perpetrator

shall not be punishable, and in the case of Paragraph b) of Subsection (1) the penalty may be reduced without limitation if the perpetrator voluntarily terminates or cleans up the environmental damage before a ruling is delivered in the first instance. (4) For the purposes of this Section 'pollution' shall mean the introduction of contaminants into the earth, the air, the water, the biota (flora and fauna) and their constituents exceeding the emission limits laid down by law or by decree of the competent authority."

As it is easily recognisable on the basis of the definition, the earth, the air, the biota (flora and fauna) and their constituents are *the objects* of the offense.

The Btk. in force defines the objects which are linked to the elements of the environment referred to in the Kvt., therefore, the Kvt. contains provisions for the earth in Section 14, the water in Section 18, the air in Section 22 and the biota (flora and fauna) in Section 23. According to Point 12 of Section 4 in Kvt., posing hazard to the environment shall mean an activity or an omission which may result in damaging the environment. As it has been already mentioned before, the definition of Environmental Offenses belongs to framework legislation, therefore, it is connected to acts giving a content to the facts of the crime: (a) the Act LIII of 1995 on the General Rules of Environmental Protection (hereafter referred to as: 'Kvt. '); (b) the Decree 21/2001. (II.14.) of the Government on the Rules of Air Protection; (c) the Decree 219/2004. (VII. 21.) of the Government on the Protection of Groundwater; (d) the Decree 220/2004. (VII.21.) of the Government on the Protection of the Quality of Surface Water; (e) the Decree 21/1970. (VI.21.) of the Government on the Protection of Trees

The act does not define the concept of the constituents of *the earth, the air, the water, the biota*. In the case of a 'material' system, the constituent refers to its chemical composition. In the case of the water and the soil, the chemical composition cannot be unified but means a chemical formula which is specific to the given place and very diverse. In addition to the concept of material composition, the water, the air and the biota in general have parts, elements as well. Moreover, a given place differs from another one in its plant and animal population. The biological composition – if there is no environmental offenses and pollution – is much more diverse than the material and chemical composition.

The criminal conducts of the offense are the following: the pollution of an object resulting in its endangerment or in damage to such an extent that its natural or previous state can be restored by way of intervention only or cannot be restored at all. Damage and irreparable damage constitute aggravated cases.

The Kvt. stipulates that the precautionary principle and the principle that preventive action should be taken are one of the fundamental principles of the Hungarian environmental law and the facts of the crime relating to causing harm ensure its achievement by means of criminal law. European requirements of harmonising legislation also require penalties for endangering the environment.³

It is established that both endangering and harming are *material offenses*, thus a causal link is needed between the criminal conduct and the result.

³ Görgényi 2015, 283.

As for *the subject* of the crime, anybody can be a perpetrator. According to the general rules, this is also true for the instigator and the accomplice and all elements of the definition are punishable when committed either intentionally or with negligence. In case of unintentional environmental offenses, the perpetrator, due to the lack of due care and attention, does not recognise the damage incurred or the threat of a damage (negligence), or, recognises their possibility but unreasonably believes in their non-occurrence (*luxuria*).⁴ On this point it is worth pointing out that the majority of environmental offenses are not deliberate. Their form of guilt is *luxuria*. The law provides for a penalty for both intentional and unintentional commitment. *Significant pollution* is an essential element of the definition of the offence.

Pollution in itself is not dangerous to the society to such an extent that it constitutes a criminal offense. This requires significant pollution. Determining the significant amount – as it varies from case to case – needs expertise, given that it is not stated in the Btk.

Considering that the hazard and the toxic effects of different chemical substances can be very different, criminality cannot be linked to a given multiplication of the limit. That is why the act links the determination of criminal liability to ‘significant’ pollution.

With regard to pollution, the Kvt. defines emission standard the following way: level of loading of the environment or any of its components - as provided for in a legal rule or a decision by an authority - which precludes the damaging of the environment (Section 4, point 25, Kvt.)

The Supreme Court pointed out in relation to an action of poisoning a well: it is the question of how the poisoning of the private well affected the neighbouring wells’ water hygiene that is relevant to answer in order to determine the well pollution’s hydrological efficiency. The poisoning of a private well in itself, without endangering the water of other wells, is not suitable to determine environmental offenses.⁵

Restorative justice applies here as well since, for example, the elimination of criminality is possible in case of less severe endangering or the unrestricted reduction of the sentence is also possible in case of an intentional infestation which is deemed more serious but which is restorable with intervention.

1.2. Damaging the Natural Environment – offense against the protection of specimens

Section 242, Btk. „(1) *Any person who unlawfully obtains, possesses, distributes, imports, exports, transports through the territory of Hungary, engages in the trafficking of or damages or destroys: (a) any species of a living organism under special protection; (b) any species of protected living organisms or species of flora and fauna which are deemed important for conservation objectives in the European Union, provided that the aggregate value of these species expressed in monetary terms reaches the threshold amount determined by specific other legislation for the species of a living organism under special protection; (c) any species listed in Annexes A and B to the European Council*

⁴ Görgényi 2015, 284.

⁵ BH 1986.87.

Regulation on the protection of species of wild fauna and flora by regulating trade therein; is guilty of a felony punishable by imprisonment not exceeding three years. (2) The penalty shall be imprisonment between one to five years if the damage done to the natural environment results in the destruction of the species of living organisms: (a) to an extent where - in the case provided for in Paragraph a) or b) of Subsection (1) - the aggregate value of such destroyed species of living organisms expressed in monetary terms reaches the highest amount determined by specific other legislation for the species of a living organism under special protection, times two; (b) to an extent where it jeopardizes the survival of the living organisms in the case provided for in Paragraph c) of Subsection (1). (3) Any person who commits the criminal offense defined in Subsection (2) by way of negligence shall be punishable for misdemeanor by imprisonment not exceeding two years. (4) For the purposes of this Section 'species of living organisms' shall mean: (a) species of a living organism in any form or stage of development; (b) hybrids of living organisms propagated artificially or otherwise; (c) derivatives of a living organism, including dead specimens and any parts and derivatives thereof or of the species of a living organism, and any goods or products made from any of the above, or containing any component that originates from any of the above."

The scope of protected subject matters can be basically divided into two groups: (a) those under the protection of international law; (b) those under the protection of national law.

The definition of Damaging the Natural Environment which appeared in the Act IV of 1978 has been significantly changed up to the present day. At the time of its introduction, our jurisdiction did not know the specially protected species of animals as a protected general legal category. Therefore, it was the judge's task to decide from case to case whether the object concerned was specially protected or not.

The act divides the definition of Damaging the Natural Environment into two distinct sections. The first one contains provisions related to the protection of specimens, the second one contains those related to the protection of natural values and areas. Thereby, the definition becomes more transparent, thus, slightly simpler and easier to handle.⁶

Regarding the framework definition of Damaging the Natural Environment, the following acts have relevance: (a) the Act LIII. of 1996 on Nature Conservation (hereafter referred to as: 'Tvt. '); (b) the Council Regulation (EC) 338/97 and the Commission Regulation (EC) 865/2006 concerning its implementation; (c) the Act XXXVII of 2009 on Forests, on The Protection And Management of Forests; (d) the Act LV of 1996 on The Protection of Wild Game, Wildlife Management and Hunting; (e) the Decree 13/2001. (V.9.) of the Ministry of Environment; (f) the Decree 348/2006. (XII.23.) of the Government on The Detailed Rules for The Protection, Keeping, Presenting And Utilisation of Protected Animal Species; (g) the Decree 67/1998. (IV.3.) of the Government on Protected and Specially Protected Communities; (h) the Decree 275 of 2004 (X. 8.) of the Government on Nature Conservation Areas of European Community Importance; (i) the Decree No. 14/2010.

⁶ As a misdemeanour, Damaging the Natural Environment is regulated in the Section 187 of the Act II of 2012 on misdemeanours, the procedure in relation to misdemeanours and the misdemeanour record system (the 'Act on Misdemeanours').

(V.11.) of the Ministry of Environment and Rural Affairs on Parcels Belonging to Areas Functioning As Nature Conservation Areas of European Community Importance

The *objects* of the offence against the protection of specimens are any species of a living organism under special protection, any species of protected living organisms or species of flora and fauna which are deemed important for conservation objectives in the European Union in certain cases and any species listed in Annexes A and B to the European Council Regulation 338/97. Background law – based on especially the definitions of the Act on Nature Conservation – lays down the objects of the offense having regard to the membership of the European Union.⁷ In relation to the protection of the environment through criminal law, the Convention on International Trade in Endangered Species of Wild Fauna and Flora - the Washington Convention (CITES) - which was adopted in Washington, on 3 March 1973 is of utmost importance.

The *criminal conducts* are unlawfully obtaining, possessing, distributing, importing, exporting, transporting through the territory of Hungary, engaging in the trafficking of or damaging or destroying the object. These mean the following: (a) unlawfully obtaining: the time when the possession begins, taking possession illegally, taking the animal, tearing down the plant, etc.; (b) possessing: maintaining the possession; (c) distributing: change of property out of the ordinary course of trade, for example, exchange; (d) importing, exporting, transporting through the territory of Hungary: movement out of the ordinary course of trade; (e) trafficking: broader than distributing because it involves order, contracting, storage, transport, etc., it is characterised by regularity and the strive to profit-making; (f) damaging: all actions during which the specimen of the given living organism is not destroyed but suffers serious harm, for example, - according to the ministerial justification - making a bird unable to fly; (g) destroying: bringing such a change which excludes further vital functions, for example, killing the animal, tearing down the plant, cutting down the tree, destroying the object.

The nature of the offense is illegality in all cases. Illegality manifests in the breach of a statutory provision or an order of a public authority laying down a prohibition or a restriction.

The whole legal system has to be taken into consideration when it comes to determining criminal liability, since laws other than criminal law may, where appropriate, exclude criminal liability. Thus, an administrative authorisation excludes illegality as in this case the danger to the society and emergency cases are excluded. Paragraph 5 of Section 9 of the Tvt. also excludes illegality, under which the provisions do not apply to the regulation (defined in a separate provision of law) of the populations of living organisms carried out in the interest of human health care, or the protection of cultivated plants or livestock. Neither do they apply to the normal agricultural management of living organisms.

⁷ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law.

The *subject* of the offense is general, *the base case* can be committed only intentionally. The subject of the protection of the environment, as bound by administrative law, is usually a special subject who is basically a natural person. This stems from the text which uses the term 'Any person who', although it can be specific and may not apply to everyone.

The aggravated cases are regulated in conjunction with destroyed species. In the case of protected and specially protected living organisms and the species of flora and fauna which are deemed important for conservation objectives in the European Union, the aggravated case may be determined on the basis of the intrinsic value of the destroyed species. As for species falling within the scope of the Council Regulation (EC) No 338/97, the aggravated case may be determined if the extent of the damage jeopardizes the survival of the herd.

The act regulates two aggravated cases, - in two distinct paragraphs: (a) if *the extent of the damage* reaches a certain threshold; (b) if it *jeopardizes* the survival of the herd.

As a result of the framework legislation, criminal regulations are closely linked with administrative rules. However, infringement of administrative rules may not be enough because criminal liability has to be determined as well and it can be established only by law. Another important aspect is the fact that the compliance with administrative rules does not exclude criminal liability.

1.3. Damaging the Natural Environment – offense against the protection of natural values and natural areas

Section 243 „(1) *Any person who unlawfully and significantly alters Natura 2000 areas, protected caves, protected sites and the population or natural habitat of protected living organisms is guilty of a felony punishable by imprisonment not exceeding three years.* (2) *The penalty shall be imprisonment between one to five years if the damage done to the natural environment results in the significant deterioration or destruction of Natura 2000 areas, protected caves, protected sites or the population or natural habitat of protected living organisms.* (3) *Any person who commits the criminal offense defined in Subsection (2) by way of negligence shall be punishable for misdemeanor by imprisonment not exceeding two years.* (4) *In the application of this Section 'Natura 2000 area' shall have the meaning defined in the Act on Protection of the Natural Environment.*”

The *objects* of the offense are the Natura 2000 area, the protected cave, the protected site and the population or natural habitat of protected living organisms. Natura 2000 areas are included in the Order 275/2004. (X.8.) of the Government and the Order 14/2010. (V.11.) of the Ministry of Environment and Rural Areas.

The two main types of the protected sites –according to the importance of protection and the eligibility of designation of protection - are national and local-scale protected sites. The local level protection of a land is established by an order of the local government, whereas the designation of national importance can be established by a ministerial order. The natural areas protected by law (ex lege) have to be considered natural areas of national importance.

In Hungary, the legal status of all of the caves is protected area by the power of law. The protected natural area as a legal nature is recorded in the land registry, however, the registration takes a long time in many cases. The areas have to be labelled using a placard which indicates, for those who arrive to the area, the required care.

Section 23 of the Act on Nature Conservation stipulates that, *by virtue of this law*, all springs, bogs, caves, sink-holes of sinking streams, salt lakes tumuli and earthen fortifications *are protected*. It also gives their detailed definition.

The protected status of an area should be registered into the land register. (Paragraph 2 of Section 23, Tvt.) On this basis, public register data and entries provide guidelines on how to decide on the protected status of areas. The act extends the criminal law protection for the community of living organisms and their habitat, which are defined in Section 4.

Thus, '*habitat*' means a confinable unit of space where a certain living organism, its population or a community of organisms occur within a natural system, and where all environmental conditions necessary for their evolution, survival and multiplication are provided (Point i), Section 4).

As for '*community*', it means an organised unit of the flora and fauna in which the populations of different living organisms coexist in a defined habitat with a characteristic pattern of interrelations.

The conduct of the crime is *the unlawful and significant alteration*.

The result of the *alteration* is a change which actually results in deterioration or burden, thus any activity that is in breach of the Tvt. Alteration may mean that of the extent, nature and use of the area.

The determination of what is '*significant*' always requires expertise. It is the situation that determines what should be considered as significant alteration, such as to what the extent the object was damaged and the scope of the damage which, in court level, require discretion in almost every cases. According to Paragraph 2 of Section 243 of the Btk., the action constitutes an offense only if the damage done to the natural environment results in the significant deterioration.

It is for the court to determine whether the damage results in the significant deterioration.

Theoretically, the proof of illegality in criminal proceedings should no longer give rise to difficulties since criminal impeachment is preceded by an administrative procedure (imposing fines) and by a civil action for compensation for damage caused in the environment.

The illegal activity necessarily means an action contrary to a provision of law or a breach of duty. The source of this law can be an act or an authority's decision – permission – as well. Anyone can be the subject of the offense. The basic case can be committed only intentionally. If the source of the duty is a specific legal provision or an authority's decision, the perpetrator can only be a person who is subject to adopting a certain conduct.

Damaging the natural environment in practice is typically committed with mere negligence. Perpetrators act for different purposes in a large number of cases but due to their negligence, they do not recognise their acts' harmful results in time. In the course of economic activities, the goal, in most cases, is obtaining material benefits.

Although the principles of criminal penal sanctions applied against legal entities are given, in the majority of cases the perpetrator is still a natural person.

The aggravated case marks the significant deterioration or destruction of the object as an aggravated result. The result is not necessarily required to occur, it is enough to demonstrate beyond reasonable doubt that because of this conduct, the significant deterioration or destruction will occur in the future. Demarcation questions obviously remain unchanged.

1.4. Poaching Fish

According to Section 246: „*Any person who: (a) is engaged in activities for catching fish without authorization, using fishing nets or other fishing equipment, excluding recreational fishing, (b) is engaged in activities for catching fish using unauthorized fishing equipment and/or methods provided for in specific other legislation, or in restricted fishing areas, is guilty of a misdemeanor punishable by imprisonment not exceeding two years.*”

According to the ministerial justification of the act: The legal object of poaching fish is the protection of regulated fishing activity.

Regarding the protection of waters, the Act LVII of 1995 on Water Management should also be mentioned. The act specifies the waters which are covered by the Act, related tasks, ownership and the basic rules of water resource management.

Dogmatically the Act XXVIII of 1998 on the Protection of Animals and the Act LV of 1996 on Hunting address nature ecology, partially water ecology.

In addition, the Act CII of 2013 on Fisheries Management and The Protection of Fish (Hhvtv) ensures the protection of the water and its ecology and especially the protection of fishes. This Act defines the basic concepts of fishing, the protection of fishes' habitat, the standards of fisheries management, fishing surveillance and the provisions on the authorisation of fishing activities. The implementing regulation of the act describes in detail the specific rules.⁸ I believe that the protection of fishes is a priority environmental task as human activity plays an essential role in maintaining fish stocks. Due to previous river regulations and the deterioration in the general status of the environment, the fish stocks in the waters by themselves are no longer capable of renewal.⁹

It is appropriate to note, in relation to water protection, that water is an integral part of both living and non-living environment, the protection of its value is not a new issue, since the importance of its protection has been recognised since antiquity. Three major milestones may be highlighted in the development of Hungary's law. The Act XXIII of 1885 on Water Law, the Act IV of 1964 on Water and the above mentioned Act on Water Management which is currently in force.¹⁰ The protection of water, as has been detailed, benefits from serious constitutional and legal protection. Despite this, rules do not always apply. Serious environmental harms can be taken as an example, especially the cyanide contamination of the Tisza in 2000 in Nagybánya which shocked

⁸ The Order 133/2013. (XII.29.) of the Ministry of Rural Affairs.

⁹ Török 2004, 127.

¹⁰ Dávidovits 2011, 71–79.

the Hungarian society.¹¹ The cyanide contamination caused extremely high damages in all parts of aquatic life but it was particularly painful to see the profound destruction of higher vertebrate animals, of large fish species indigenous in waters (for example catfish, bass, pike). We should further mention Hungary's modern-day environmental disaster, the red sludge pollution which caused particularly serious results and which partially destroyed or significantly damaged the natural and built environment of Devceser, Kolontár and Somlóvásárhely. As a result, 10 persons died, 286 were injured, all life in the Ogliolo stream died out, the destruction and the damage of houses and moveable properties caused considerable damage.¹² We may all recall that electronic media reports credibly presented the red, dead landscape, which, I assume, should be a memento for present and future generations, as Tamás Hágel says.¹³

The act regulates the criminal conducts in two distinct points.

As specified in point a), the punishable conduct is the activity for catching fish without authorisation. The protection of criminal law covers only activities using fishing nets or other fishing equipments but the concept does not include recreational fishing.

Paragraph 1 of Section 18 of the Act XLI of 1997 on Fishing (hereafter referred to as: *Hhtv.*) determines which documents are required for authorised fishing. This includes the fishing ticket and the territorial ticket.

Point b) criminalises activities for catching fish using unauthorized fishing equipments and/or methods provided for in specific other legislation, or in restricted fishing areas.

Sections 23-24 of the Hhtv. provide for an open taxation of illegal fishing equipments and methods. In particular, it is prohibited to carry out an action for fishing with AC-powered electronic devices, toxic or intoxicating substances, explosive materials, pointed tools, diving harpoons or any other diving tools suitable for fishing. It is also prohibited to carry out fishing activities using a device or equipment which cuts off at least the half of the channel of a river with an average water level or an inlet in the transverse direction. Moreover, fishing with an electronic device and employing the gaffing technique or loops – except from the cases mentioned in the Act - are also prohibited.

The definition has a general subject, anyone can be a perpetrator.

Each of the conducts can be carried out only with a proactive behaviour. The offense is immaterial and is completed with the beginning of the activity for fishing. Poaching fish is a misdemeanor punishable with a term of imprisonment for a maximum of two years. It may be committed only intentionally. The intention may be direct or oblique.

¹¹ Tóth 2002, 55–60.

¹² Nemzeti Közszerológati Egyetem 2018.

¹³ Hágel 2016.

The definition of poaching fish has been in force only for two and a half years but there are in judicial practice examples of these types of behaviour. On the day after the entry into force of the act, the accused person intended to fish using the gaffing technique in one of the bays of the Danube but was caught by gamekeepers after the second throwing. The court, in its final judicial ruling delivered in the beginning of February 2014, sentenced him as a recidivist to a detention of 30 days because of the infringement of poaching fish defined in Point b) of Section 246 of the Btk.¹⁴ In another case, a person who was fishing without permission with lift nets in the fishing area of the main channel was given a suspended sentence in prison.¹⁵ There is a more serious judgement, namely, when the accused who was fishing with an illegal fishing equipment was sentenced to imprisonment for being an accessory to theft and poaching fish.¹⁶ The sanction was obviously appropriate to the offender's circumstances and record. It is however an important signal to the society that the offender, who was pillaging fish stocks should expect the rigour of the law.¹⁷

1.5. Violation of Waste Management Regulations

Section 248 „(1) Any person who: (a) engages in the disposal of waste at a site that has not been authorized by the competent authority for this purpose, (b) engages in waste management activities without authorization, or by exceeding the scope of the authorization, or engages in any other unlawful activity involving waste, is guilty of a felony punishable by imprisonment not exceeding three years. (2) The penalty shall be imprisonment between one to five years if the criminal offense described in Subsection (1) is committed involving waste that is deemed hazardous under the Act on Waste. (3) Any person who commits the criminal offense by way of negligence shall be punishable for misdemeanor by imprisonment not exceeding one year in the case provided for in Subsection (1), or with imprisonment not exceeding two years in the case provided for in Subsection (2). (4) In the application of this Section: (a) 'waste' shall mean any substance that is deemed waste under the Act on Waste, and that may be hazardous to human life, bodily integrity or health, or the earth, the air, the water, and their constituents, and the species of living organisms; (b) 'waste management activity' shall mean the collection, gathering, transportation of waste as defined in the Act on Waste, including if exported from or imported into the country, or transported through the country in transit, and the pre-processing, storage, recovery and disposal of waste.”

1.6. Prohibition from Residing in a Particular Area

Section 253 „Banishment may also be imposed against the perpetrators of environmental offenses, damaging the natural environment, poaching game, poaching fish, violation of waste management regulations and organization of illegal animal fights.”

¹⁴ Esztergom District Court 4.B.602/2013/5.

¹⁵ Nyíregyháza District Court 2.B.1016/2014/2.

¹⁶ Szarvas District Court 8.B.133/2012/17., Gyula Regional Court Bf.340/2013/5. L

¹⁷ Hágér 2016.

Among the elements of the definition, *the base case* includes *two conducts*: (a) engages in the disposal of waste at a site that has not been authorized by the competent authority for this purpose; (b) engages in waste management activities without authorization, or by exceeding the scope of the authorization, or engages in any other unlawful activity involving waste

Disposal is not a waste management definition in the laws in force, so it could be interpreted as meaning all kinds of activities that are physically considered to be such, obviously including waste disposal. The point, again, is to adapt for the administrative decision and its lack.

Waste management is a collective term and the Btk specifies its content on the basis of the Act on Waste Management (Act XLIII of 2000), however in a different way because it does not correspond to the concept of management used there. (management shall mean activities to reduce the hazardous effects of waste, to prevent and exclude environmental pollution, to bring it back to production and consumption and the application of a procedure realising management, including the after-care of facilities).

The other phrase is also directly related to administrative decisions and the general rules of waste management because it refers to *the lack* of authorisation or, more generally, to all illegal activities.

The former is related to commercial waste management, the latter can be extended to infringements committed by individuals such as inhabitants of a locality. The legislature clearly intended to define the scope of the criminal conducts as widely as possible.

Paragraph 2 explains the above mentioned misinterpretation – the relativity of the distinction between waste dangerous to the environment or hazardous waste – by considering hazardous waste - related unlawful conducts to be aggravated cases. Consequently, the generally waste character of the whole case is pointed out and justified. The hazardous characteristics of hazardous waste are set by legislation and are listed in the annex of wastes.

The decision 1/2015 of the Curia stipulates that the Act CLXXXV of 2012 on Waste (Ht) – in order to bring the legislation into line with the Directive 2008/98/EC – replaces the Act XLIII of 2000 on Waste Management (Hgt.). According to the provisions of the Act on Waste in force as of 12 July 2013, its scope does not extend to wastewater.

The pairing of *intentionality and negligence* occurs here, too. These are to be interpreted as described above. Both the base case and the aggravated one may be committed by way of negligence as well.¹⁸

¹⁸ Bándi 2014.

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