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The Role of Civil Law in Environmental Protection: Liability, Damages, and Remedies in Hungary[1]

Abstract

Private law liability can be placed within the scope of civil law. Private law regulates personal and financial relations, and accordingly in the field of environmental protection, it sanctions unlawful conduct caused to 'others' at the level of liability. Therefore, the primary source of law in Hungary with regards to private liability is the Civil Code. The legislation regulating environmental protection also settles liability issues under private law, including the Environmental Protection Act and the Nature Conservation Act, as well as the sectoral legislation and implementing decrees. In addition to the framework of the Hungarian legal system, the issue of liability must also be examined in international and EU areas, which influence and determine the content of environmental relations through 'soft' and 'hard' regulators.

Keywords: Environmental protection, environmental liability, environmental damage, joint and several liability, threat to the environment

1. Introduction

In general, we talk about responsibility in many contexts in connection with environmental protection. The whole of humanity is responsible for the destruction and waste of the Earth's treasures, the present generation is responsible to future generations for the protection of a healthy environment, the state is responsible to all other states for the cleanliness of the seas, rivers and atmosphere, its leaders have

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a political responsibility towards the citizens if they do not do everything possible to protect the environment. In addition, all citizens have a moral responsibility to the community if they pollute the environment. "The institution of responsibility is one of the tools of self-improvement of society, which is differentiated in many ways by interacting systems of behaviour (religion, morality, law). Yet it is a unified complex, the sub-complex of which is legal responsibility, and within that, civil liability."[2] In the field of environmental protection too, the degree and extent of the self-improvement of society is the result of the combined effect of the different systems of responsibility, within which the individual sub-complexes also affect each other, but their effectiveness is not the same.[3] Legal responsibility plays a prominent role, because the organising-coercive apparatus of the state stands alone behind it. The regulation of legal liability must be very clear, distinct, coherent and applicable, as it fully encompasses legal relationships. Not only legislation, but also law enforcement must deal with potential legal loopholes uniformly on the basis of dogmatic and legal interpretation in the interest of legal certainty. The field of environmental protection[4] is made up of a complex system of administrative, civil and criminal liability.[5,6]

Administrative and civil law aspects appear with varying intensity in environmental regulations from country to country. In general, administrative law can be said to be decisive in terms of the methodological delimitation of environmental regulation, which basically points to the predominance of state influence. At the same time, however, economic regulatory instruments, voluntary instruments and consensual instruments that reflect state influence in a less or indirect way are also gaining more prominent roles. Through these instruments, legal regulation requires the full range of public and private law instruments.

The issue of environmental liability permeates environmental regulation and the assessment of environmental use horizontally. Although a large part of the preventive tools can be linked to the regulation of the administrative area (e.g. licensing procedures), the limits of legal liability also play a role in terms of prevention, but especially in terms of reparations.[7]

The field of environmental liability is dominated by administrative liability, with civil and criminal liability gaining more and more territory. With regard to

2 | Lenkovics 2001. See also: Eörsi, 185. At the same time, Ödön Zoltán adds that "(...) liability in the field of environmental protection is also an important tool for the self-preservation of society." Zoltán 1985, 78.
3 | Sólyom 1977, 28.
4 | See more: Farkas Csamangó, Hegyes 2017, 194–204.
5 | Text effective from April 2012 in connection with the amendment of the Environmental Protection Act. Section 101 (1) of the Environmental Protection Act.
6 | See more: Csapó 2015.
7 | Restitutive sanctions place the emphasis on the restoration and compensation of the damage and injury caused, as opposed to repressive sanctions. For more information on the sanction bond and claims settlement obligations, see: Marton 1993, 26–35.

civil liability, the issues of liability for damages naturally come to the fore. General civil liability, compensation for imputable damages, prevention for educational purposes, but at the same time financial incentives based on repression and liability-based reparations, also belong to this category. Liability for damages is a financial liability that adjusts its sanction to the damage caused, regardless of the degree of culpability of the conduct causing the damage. It is therefore characteristic that it reacts retrospectively to human behaviour that has already taken place (the damage) by imposing compensation in order to deter the perpetrator, and indeed everyone else, from similar behaviour in the future.[8]

With regards to the role of civil law, this role is particularly pronounced, which is not limited to the field of compensation – according to the classical conception – although it is indisputably one of the decisive legal institutions. However, in the context of civil law legal institutions, other areas, such as the legal protection of persons, rights in rem, the law of obligations, and the doctrine of liability, are also incorporated into the complex system of environmental regulation with a decisive role.

Private law liability can be placed within the scope of civil law.[9] Private law regulates personal and financial relations, and accordingly in the field of environmental protection, it sanctions unlawful conduct caused to 'others' at the level of liability. Therefore, the primary source of law in Hungary with regards to private liability is the Civil Code.[10] The legislation regulating environmental protection also settles liability issues under private law, including the Environmental Protection Act[11] and the Nature Conservation Act,[12] as well as the sectoral legislation[13] and implementing decrees. In addition to the framework of the domestic legal system, the issue of liability must also be examined in international[14] and EU[15] areas, which influence and determine the content of environmental relations through 'soft' and 'hard' regulators.

According to the Fundamental Law of Hungary (2011), natural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural values shall comprise the nation's common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual (Art. P Section (1)), enshrines the protection of private and family life (Art. VI), recognises and enforces the right

8 | Lenkovics 2001. See more: Gellért 2007, 1224–1229.
9 | See more: Horváth 2017, 264–292; Gyüre 2024, 111–121.
10 | Act V of 2013.
11 | Act LIII of 1995.
12 | Act LIII of 1996.
13 | For example: Act CXVI of 1996 on Atomic Energy. See more about it: Mádl 2025, 47–90. See more about the regulation of other countries: Borislavova Borisova 2025, 9–46; Penttinen 2025, 91–121; Samec Berghaus, Ferčič & Drnovšek 2025, 123–155; Teles Da Silva 2025, 157–192.
14 | See more: Kecskés 2012; Majtényi 2012; Raisz 2010, 9–25.
15 | See more: Fodor 2024, 67–92.

to a healthy environment, the polluter pays principle (Art. XXI), the right to physical and mental health and GMO-free agriculture (Art. XX). The provision of the Fundamental Law uniquely formulates values, principles and rights at both European and international level that are forward-looking in terms of environmental protection.[16] The provisions of the Fundamental Law[17] show the commitment of the given country with regard to the enforcement of environmental interests, the enforcement of which appears in the legislation in the interest of the application of the law, and judicial practice (at domestic, EU and international level) is suitable for the enforcement of this aspiration. Accordingly, this process can also be traced in private law regulation and judicial practice.

2. Types of civil liability for environmental harm

With regards to environmental damage, it is difficult to give an exhaustive and unambiguous answer from the point of view of private liability. The concept of environmental damage is not defined in the Civil Code, so we must start from the general shape of damage. According to the traditional private law legal approach to damage, damage can be classed as material and non-material. In terms of the elements of damage, the actual loss of property, costs, lost profit, which in many cases can be detected and quantified itemised, while in the absence of this, the tools of compensating for material damage is the enforcement of general compensation.

Lenkovics stated as a problem that "a significant proportion of environmental burdens are those that are not recognized as compensable damages by traditional liability systems (e.g. general strain on the nervous system caused by noise, stench, vibration damage, aesthetic damage, etc., resulting in constant malaise, decreased performance, or possibly psychological or physical health damage). However, the legal recognition of liability for non-material damage in 1977 paved the way for compensation for such types of damage as well".[18] However, the latest judicial practice has already dealt with this problem, and the possibility of compensation for non-material damage resulting from activities harmful to the environment already appears in case law.

Thus, 'damage' means that damage occurs, the ecological system is affected, which includes damage to public property, private property and persons alike. We can distinguish different areas of harmful behaviour: a) people, b) the ecological

16 | See more: Szilágyi 2022, 479–526; Hornyák & Lindt 2023, 31–48; Szilágyi 2021, 130–144; Szilágyi 2019, 88–112; Olajos & Mercz 2022, 79–97.
17 | See more about the constitutional regulation of environmental ptotection of other countries: Ofak 2025, 349–369; Vučković 2023, 145–160; Lutman & Strojan 2023, 31–51; Židek 2021, 145–160; Rakoczy 2021, 121–129.
18 | Lenkovics 2001.

system or a living organism that is part of such a system, c) ownership, e.g. plants or animals, and d) ownership – in the form of buildings. There are damages that are significant in terms of their ecological impact, e.g. death, injury, genetic mutation, birth defect, or impairment of reproductive function in humans, and also applies to damage that causes irreversible change or causes significant change. If no actual significant damage event occurs, the possibility of the risk of significant damage also establishes the form of liability.

Anyone who causes damage in violation of the laws and specific official regulations on the protection of nature is obliged to compensate for the damage in accordance with the rules of the Civil Code on activities involving increased danger.[19] Damages caused by violating the rules of nature protection includes a) actual material damage, b) loss of profit, c) justified costs incurred in connection with the elimination of the damage, d) non-material damage resulting from the deterioration of the state and quality of nature, or e) non-material damage expressed in the deterioration of the living conditions of a society, its groups or individuals.[20]

If the extent of the damage cannot be determined, the person responsible for the damage is obliged to pay compensation in an amount that is suitable for compensating for the damage suffered by the injured party (general compensation).

Pursuant to Section 103 (1) of the Environmental Protection Act, damage caused to other parties by virtue of activities or negligence entailing the utilisation or loading of the environment shall qualify as damage caused by an activity endangering the environment, and the provisions of the Civil Code on activities entailing increased danger shall be applied. Due to the legal connection, in addition to the rules of the Civil Code on liability for hazardous operations, its general provisions on the risk of damage also apply. Therefore, in the application of Section 103 (1) of the Environmental Protection Act, both conduct causing environmental damage and conduct threatening to cause damage provides an appropriate substantive legal basis for bringing an action.[21]

When assessing the effects of activities that use and burden the environment from a civil law perspective, several points of connection can be identified – in addition to the significant area of liability for damages and compensation. These include the possibility of applying the rules of neighbours' rights, the protection of possessions, the protection of personal rights, and liability issues arising from tortious and contractual legal relationships.

The Civil Code and the Environmental Protection Act both stipulate the unit of liability for damages arising from non-contractual damage in environmental protection. By interfering with legal regulations, it creates the possibility of

19 | Section 81(1) of the Nature Conservation Act.
20 | Section 81(2) of the Nature Conservation Act.
21 | See: Civil Decision No. 2233/2010.

uniform enforcement of the law for the application of the law. Thus according to the Civil Code, a person who pursues an activity that is considered highly dangerous shall be liable for any damage caused thereby. Where such a person is able to prove that the damage occurred due to an unavoidable cause that falls beyond the realm of highly dangerous activities, he shall be relieved from liability. These provisions on the liability for hazardous operations shall also apply to persons who cause damage to other persons through activities that endanger the human environment (Civil Code, Section 6:535 (1)–(2) [Liability for hazardous operations]).

Based on the provisions of the Civil Code, the rules of liability for hazardous operations can be applied in two ways. On the one hand, if the activity can be traced back to the nature of a hazardous operation, i.e. there is a hazardous operation qualification (the scope of which varies and can be determined individually). It is not even possible to provide an exhaustive list of behaviours, because the content and scope of this activity changes and expands with the development of technology, therefore the court must decide individually whether the activity arising in the given case entails an increased danger (BH2002. 306). Therefore, the law continues to leave it to case law to determine what constitutes a hazardous operation. The position developed by the Budapest Court of Appeals formulated a system of guiding criteria, according to which an activity is associated with increased danger if even a relatively minor irregularity occurring during its continuation could create a dangerous situation threatening serious damage. The activity is also classed as extremely dangerous if the lesser culpability of the person who continues it would create a situation threatening serious damage, and if it would cause a threat of damage to the life, physical integrity, health or property of a larger number of persons at the same time (BDT2012. 2661). When assessing an activity involving an increased risk, the characteristic features of the device used in the course of operation must be examined, and the consequences of the possible causal process that can be initiated by the activity must also be taken into account. It must be considered on a case-by-case basis whether a minor malfunction occurring during normal use could cause disproportionately widespread or disproportionately serious damage (BDT2010. 2358).

On the other hand, if a threat to the environment can be established, it is not the hazardous nature of the operation that is decisive, but the fact of the threat to the environment itself that gives rise to the application of objective liability. In many cases however, the threat to the environment resulting from environmentally hazardous behaviour can be traced back to the hazardous nature of the operation. The point of connection formulated by the Environmental Protection Act focuses on the application of the rules on activities involving increased danger, according to which damage caused to other parties by virtue of activities or negligence entailing

the utilisation[22] or loading[23] of the environment shall qualify as damage caused by an activity endangering the environment, and the provisions of the Civil Code on activities entailing increased danger shall be applied (Environmental Protection Act Section 103(1)). The Civil Code contains an analogy, according to which the rules on activities involving increased danger must be applied to those who cause damage to others with their activities endangering the human environment. This indicates that a tortfeasor by an activity endangering the human environment is liable under the rules of civil law, and on the other hand, that the legal provision also determines the possibility of exemption from this liability.

We need to clarify the terminology of the Environmental Protection Act in order to properly handle individual conceptual elements. The behaviours and consequences associated with the use of the environment[24] form a close chain of concepts to be interpreted together. A threat to the environment is actually a dangerous behaviour that can cause damage to the environment. However, environmental damage already has a harmful result. At the same time, environmental pollution does not necessarily mean the state prior to threat to the environment but hides the circumstances through which threat can occur[25] (BH2007. 16., BH2007. 259., BH2003. 419). Environmentally hazardous behaviour can generally be established as a consequence of behaviours falling within the scope of causal environmental law, but of course not exclusively. Such behaviour includes, for example, threat to the environment arising from noise pollution.

22 | Pursuant to Section 4 of the Environmental Protection Act 'utilization of the environment' means causing changes in the environment and making use of the environment or any of its components as natural resources. 'Environmental component' means land, air, water, the biosphere as well as the built (artificial) environment created by humans as well as the constituents thereof. 'Environment' means the environmental components and the systems, processes and structure thereof. 'Natural resource' means the environmental components or certain constituents thereof (with the exception of the artificial environment) that may be used for satisfying the needs of society.

23 | 'Environmental impact' means the direct or indirect emission of a substance or energy into the environment.

24 | 'Use of the environment' means an activity involving the utilisation or loading of the environment or a component thereof.

25 | 'Environmental pollution' means loading a component of the environment above the emission standard; unlawful conduct, which, if it can be traced back to human conduct, is a case of exceeding the limit set by law or in an official decision.

'Level of environmental' pollution means the state of the environment or a component thereof that may be characterized by a pollution level that has occurred as a result of environmental pollution.

'Threat to the environment' means the imminent threat of environmental damage.

'Activity posing imminent threat to the environment' means an act or omission leading to an imminent threat of environmental damage.

'Damage to the environment' means an act or omission as a result of which environmental damage occurs.

'Environmental damage' means any measurable adverse and significant change in the environment or any environmental components which may occur directly or indirectly, or any measurable impairment of a natural resource service which may occur directly or indirectly.

However, when examining behaviour that endangers the environment, the provisions of the Environmental Protection Act must be taken as a starting point. According to the Environmental Protection Act 'threat to the environment' means the imminent threat of environmental damage. Environmental damage means any measurable adverse and significant change in the environment or any environmental components which may occur directly or indirectly, or any measurable impairment of a natural resource service which may occur directly or indirectly. According to the Environmental Protection Act, any activity posing imminent threat to the environment means an act or omission leading to an imminent threat of environmental damage, while damage to the environment means an act or omission as a result of which environmental damage occurs. It follows from all of this that the consequence, i.e. threat to the environment or damage to the environment, can be achieved by active and non-active (omission) behaviour, however the behaviour endangering the environment does not necessarily have to produce environmental damage, the direct risk of environmental damage is sufficient. However, this emergency situation cannot be measured, it is difficult to define it exactly, which again puts the emphasis on the judge's discretion and the importance of case law as in the assessment of the dangerous nature of the operation.

With regards to the protection of personality rights and the protection of possession, the general forms of liability for damages can be applied, and not the dangerous operational, objective liability form. Therefore, it is of decisive importance in determining the legal basis for the enforcement of claims, which makes it easier or more difficult to enforce the applicant's position with regards to the burden of proof.

In civil legal relationships, therefore, a distinction must be made between cases of contractual and non-contractual liability. While in the above we have touched on the issue of liability outside the contract, the issue of foreseeability is relevant in contractual relationships. Pursuant to Section 6:142 of the Civil Code, the person who causes damage to the other party by breaching the contract shall be liable for such damage. It is exempt from liability if it proves that a) the breach of contract was caused by a circumstance beyond its control, b) a circumstance that was not foreseeable at the time of conclusion of the contract, c) and it could not be expected that the circumstance was avoided or the damage was averted.

3. Legal standing: Who can claim damages?

In private and civil proceedings, anyone whose personality or property rights have been violated may be a plaintiff. The prosecutor also has the right to initiate a lawsuit in case of endangerment to the environment and may propose a ban on the activity or the payment of damages. On the defendant's side is the user of the environment, i.e. the person who has rights and obligations in relation to the

environment, or who carries out behaviour related to the use, burden, endangerment and pollution of the environment.

The Deputy Commissioner for Fundamental Rights (Ombudsman), who[26] is responsible for the protection of the interests of future generations, monitors the enforcement of the interests of future generations.[27] The procedure of the Commissioner for Fundamental Rights may be initiated by anyone who considers that the activity or omission of an authority violates or entails a direct threat to his or her fundamental right, provided that he or she has exhausted the available administrative remedy. The Commissioner for Fundamental Rights may also initiate proceedings *ex officio* if it becomes necessary to investigate a maladministration affecting a larger group of natural persons or if a comprehensive examination of the enforcement of a fundamental right is necessary. In Hungary, social organisations also carry out significant and decisive activities in order to enforce environmental interests. Under certain conditions, social organisations have the status of clients and can therefore participate in the proceedings of the authorities and courts. The procedure of the Commissioner for Fundamental Rights and the activities of social organisations can be fundamentally linked to matters related to public administration. However, it should be noted that they are of great importance and effectively contribute to environmental interests in the course of environmental enforcement, using various tools. Their activities are outstanding in the field of fact-finding, establishing legal conclusions, gathering and collecting information, and the information and findings revealed in the course of this activity can also be used in private law proceedings.

There are no special rules for civil lawsuits in environmental matters. Depending on the legal basis for the enforcement, civil, administrative or criminal proceedings take place.

4. Burden of proof and causation

In the examination of the question of legal liability, one of the most important and debatable issues is the question of causality, which can be approached on the basis of private law as the question of the existence and determinability of the causal relationship between the conduct causing the damage and the occurrence of the damage as a result. There is no legal dispute for damages that does not focus on the issue of causality, which is especially true in the case of certain special tortious liabilities,[28] where the existence of causality is a factor that creates liabil-

26 | Act CXI of 2011 on the Commissioner for Fundamental Rights
27 | See more: Bándi 2020, 7–22; Bándi 2021, 342–349; Bándi 2022, 17–71; Krajnyák 2022, 203–248.
28 | According to Bar, in the case of tort liability, causality is the established necessary connection between an erroneous human behaviour and the existence of a source of danger, as well as the damage to be compensated for which the actor or omission must be liable. Bar 1999, 463.

ity.[29] The concept of causation is not defined, it is necessary to establish the facts and aspects to be taken into account during the assessment, for which the legal provisions provide a framework, legal practice and theory provide a basis.

According to the foreseeability limit of the Civil Code (Section 6:521 of the Civil Code), no causal relationship shall be deemed to exist in respect of any damage that the tortfeasor could not and should not have foreseen. However, the examination of the foreseeability aspect could already be discovered in the earlier case law of the court (BH1984. 195, BH2008.299, BDT2011. 2393). The foreseeability limit can also be derived from the previous regulation. In the Hungarian regulation in force, the starting principle of the causal relationship is that the person who causes damage is obliged to compensate it. The tortfeasor shall be relieved of liability if his or her actions or omissions were not imputable. According to the doctrine of imputability, the person liable for damage is the person whose conduct has a contemplation of the harmful consequences and covers the foreseen or foreseeable consequences. Within the scope of material liability regulated by the Civil Code, the liability of the operator of a hazardous operation can be established regardless of the content of the consciousness, it is sufficient to have causality in the sense that the damage occurred in connection with the operation of the hazardous operation. The question of causality is both a condition of liability and a basis of liability in the case of this situation (activity involving increased danger).[30] The relationship between cause and effect creates it, the lack of which does not establish liability. In the case of damage caused by an activity involving increased danger, which occurs as a result of a hazardous operation or environmental hazard, a presumption of causation can be established.

In the course of the examination of causality, it is necessary to first focus on the exploration of the causes leading to the damage (causal identification), and then on the determination of the relevant causes (causal selection). The *conditio sine qua non* (doctrine of the equivalence of conditions) only serves to explore and sequencing the acts that preceded the occurrence of the damage. The doctrine of the 'closest cause' examines the relationship between an action and regularity in time and space. As a cause-selection theory, it tries to find the act that has the most direct relationship with the damage. A supplementary element and organising principle of this is the assessment of the issue of foreseeability.[31] In the course of assessing the injury caused, increased attention is paid to the enforcement of the foreseeability clause, but in the case of multiple damages, the elements of adequate causality prevail dominantly, but not as the only ones.

29 | Bar 1999, 434–435.
30 | Szalma 2000, 51 and 61. See more: The elements of the liability condition and the liability basis are set out in Section 339 of the Civil Code and Section 345 of the Civil Code. In the case of material liability, fault – even if it exists – does not have a decisive role in liability.
31 | Fézer 2006, 127.

On the basis of the principle of full compensation, the compensation realised with the interests of the injured party in mind is reduced in certain cases. Behaviours aimed at this include the contribution of the injured party, and in the case of the accumulation of causes, the establishment of the liability of those who caused the damage. These aspects all lead to the fact that in the event of a violation of the linear causal chain or adequate, equivalent causes, the tortfeasor's obligation to pay full damages is also impaired. In other words, approaching the issue from another angle, the complete and exclusive existence of causality generally leads to full compensation, and the question of causality also affects the amount of compensation. Factual causes and causal, legal causation must be synchronised in order to establish liability.

The court can approach the question of causation from three aspects. Firstly, the determination of causes closer in time (*causa proxima*), secondly, the most influential causes, and thirdly, the effect of the series of causes (cumulative coefficient causes).[32] In the case of environmental damage, the exploration and assessment of cause and effect is very difficult, which basically stems from the fact that the time frame of environmental damage is wide, requiring the examination of several coefficient conditions, and the scope of those affected is also difficult to determine in many cases. In the case of environmental damage, the evidentiary procedure is usually very complicated and has an uncertain outcome. In the case of multiple inseparable pollution sources, joint and several liability of the tortfeasors is established.

In some cases, it is very difficult to establish a causal relationship. It is hardly possible to select and prove a 'relevant' cause, the result is usually at the end of a whole chain of reasons.

In the case of multiple contributing factors that have led to a harmful outcome, the relationship between the causes plays a major role. In the case of a set of causes, we can distinguish between cumulative[33] and competing causes. In the case of cumulative causes, multiple damages and joint and several liability are usually established. In the case of competing causes, causality is combined with a legal precondition, resulting in a reduction and individualisation of liability.[34]

4.1. Joint and several liability

Joint and several liability is a legal institution related to the joint cause of damage, according to which the damage arises as a result of the combined conduct

32 | Julesz 2007, 36.

33 | In the case of the cumulation of causes, damage occurs as a result of several acts, in such a way that all of them contributed to the occurrence of the damage to some extent. In the case of competition between causes, the decisive cause and thus the person causing the damage are selected from the causal chain according to certain criteria. See more: Szalma 2000, 79.

34 | Lenkovics 2001.

of several persons.[35] "Co-causation is the phenomenon that several people are involved in the causal process that has produced a harmful result with such a contribution without which the event in question would not have occurred."[36] From the point of view of the relationship between the contribution of the persons, it is irrelevant whether they were aware of each other's activities or not, or to what extent they contributed to the development of the harmful result, nor whether their harmful behaviour is the same or different in time (BDT2011. 2538). Thus, it is basically a prerequisite for the application of joint and several liability that the coefficients of their conduct have an effect and point in the direction of the occurrence of the damage, i.e. a causal relationship can be demonstrated between the conduct causing the damage and the damage. It is characterised by the fact that it can also be applied if the harmful conduct can be assessed on the basis of other grounds for liability (BDT2010. 2363, P. Act III/B. 20408/1965, Pf. V. 21379/1979). In the case of so-called 'intentional co-causing', the tortfeasors cause the damage through joint conduct (will), regardless of whether the activity is carried out at the same time or at different times, and regardless of the extent to which the individual activities interact.

In the case of so-called 'involuntary co-causing', the damage was caused by the separate conduct of several persons (not by common will).[37] In this case, the application of the joint and several rule is possible if the damage would have been caused by any of the activities (omissions) alone;[38] or the unlawful consequence is the result of multiple interactions; or the damage is not the result of a combined effect, but the activities are causally linked to each other and, according to general life experience, the individual damages help and strengthen each other. In such a case, the proportion of joint damage cannot be determined, and it is not possible to determine which of their activities actually caused the damage, but the activity of all of them can be established as a causal condition. There is no need for unity of will between the tortfeasors. Based on this objective approach, the combined effect of the conduct of the tortfeasors is decisive. On the basis of the above therefore, the conditions of joint and several liability are not met if, in the case of joint damage, the individual conduct causes damage completely independently of each other in such a way that the causal link cannot be established. Thus, a distinction must be made between the absence of the conditions of joint and several liability and the omission of joint and several liability. While in the former case there is no causal link between the harmful conduct of the individual activities, in the latter case joint

35 | Joint damage of several persons Section 6:524 of the Civil Code.
36 | Marton 1993, 131. See more: 147.
37 | Co-causation can occur by joint causation, or by independent actions in the framework of involuntary cooperation (simple co-causality). See more: Marton 1993, 147.
38 | For example, gas from a chemical plant pollutes the air, which is itself a cause of environmental pollution, regardless of the fact that there are other air pollution plants in the area. However, there is joint and several liability based on joint tort if all of the harmful conduct was capable of causing the damage.

and several liability can be established, but the court may disapply it. In the case of multiple damages, of course, the law may also expressly order the application of joint and several liability in certain cases.[39]

The justification for the application of joint and several liability is created by the reparation of the injured party and the balancing of the injured party's position. On the other hand, it creates the complete vulnerability of the tortfeasor in a case where, from the point of view of establishing liability, the minimis tortfeasor bears the compensation for the entire damage, even if this liability lasts temporarily until the final conclusion of the enforcement of the right of recourse against the tortfeasor. Accepting the legal policy requirements of the injured party's reparations, the primacy of the injured party and the difficulties of enforcing shared liability (Section 6:524 (2) of the Civil Code), it is expedient in practice to enforce the legal institution of joint and several liability very carefully and as an exceptional option.

Section 6:524 (4) of the Civil Code extends the rules of joint tort and introduces the so-called 'alternative liability'.[40] According to this, the provision applicable to joint tortfeasors shall apply mutatis mutandis also if any one of the activities carried out concurrently would in itself be sufficient to cause the damage, or if the particular activity that in fact caused the damage cannot be identified. In this case, it is a question of an analogous assessment of concomitant behaviour. While in the case of joint tort, the contribution of the harmful behaviour is significant, in this case a person whose behaviour did not cause damage can also be held liable.

4.2. Special rules of joint and several liability in environmental protection

The joint and several liability of the obligated party may be based on legislation or contract, but it can also be triggered by the nature of the service (indivisible service). The Civil Code establishes joint and several liability in the case of several legal institutions, but the rules of joint and several liability laid down in other legal acts can also be included here. In the case of environmental damage, Section 102 of the Environmental Protection Act lays down special rules. These rules regulate the joint and several liability of the owner and possessor of the property, and in the case of companies (business associations), the founders and successors, the members and executive officers, and their conditions.

4.2.1. Joint and several liability of the owner and possessor (user) of the property

"Environmental damage often occurs only as a result of the polluting behaviour of several emitters, each of which is of negligible danger, or after several years of cumulation of pollutants. In such a case, the first obstacle to the – joint and

39 | Nochta 2012, 119–136; Zoltán 1985, 119.
40 | Lábady 2014, 173; Fuglinszky 2015, 352–364.

several – conviction of the single or multiple tortfeasors is the 'finding' of the person who caused the damage."[41] In the case of material liability, the tortfeasor is determined by causality as a criterion establishing liability and points to the responsible person. The legal provisions may also determine the scope of potentially affected persons, e.g. the owner of the property, the operator of a facility, the previous owner, the operator at the time of contamination, the transporter of the hazardous material to the site, the seller of the hazardous material, etc.

Court case law consistently applies joint and several liability for harmful conduct on property. The vast majority of environmentally polluting behaviours can be linked to this fact. The law provides for the possibility of applying the special rules of joint and several liability regulated by the Environmental Protection Act not only in the field of public law, but also in the field of private law, given that these rules can be found among the general provisions of liability. However, it should be noted that the Environmental Protection Act is fundamentally public law in nature.

According to the Environmental Protection Act (Section 102) liability for environmental damage or for any risk to the environment shall fall joint and severally – pending proof to the contrary – upon the person who is registered as the owner or possessor (user) of the property after environmental damage or threat to the environment has occurred on which the activity resulting in damage to the environment or posing imminent threat to the environment was carried out. The owner shall be exempted from joint and several liability if able to name the actual user of the real property and if able to provide proof beyond any reasonable doubt that liability does not lie with him. These provisions shall be appropriately applied to the owners and the possessors (users) of non-stationary (mobile) contaminating sources.[42] The rule formulated is not a direct liability rule, but rather a liability-based rule, according to which the obligated party is liable for its polluting activities even if it does not itself engage in polluting activities.

4.2.2. Joint and several liability of the founders and successors of business associations

If several polluters of the environment jointly form a business association to unite the similar or complementary activities that they had formerly performed, such business association shall, with respect to environmental protection obligations, be regarded as the successor in title of the founders, and its liability shall be

41 | Lenkovics 2001.

42 | Section 102(1)–(3) of the Environmental Protection Act. On the basis of the previous law in force before 2007: "Liability for illegal activity, with the exception of criminal and misdemeanour liability, shall be borne jointly and severally by the owner and possessor (user) of the property on which the activity is or was carried out, until proven otherwise."

joint and several with the founders (Section 102(4) of the Environmental Protection Act).

Sui generis legal succession based on legislation and the joint and several liability regulations established in the relationship between the legal predecessor and the legal successor, may only be applied in the field of environmental protection and under its legal effect. This is not a case of organisational (company law) succession, but the governing provision establishes *sui generis* joint and several liability based on legislation under the scope of the Environmental Protection Act, which means continuity in activity. The issue of continuing the activity should be interpreted broadly in the sense that the activities of each founder do not necessarily have to be the same or have the same scope of activity, as it can also be determined by considering the persons performing different sub-processes projected onto the vertical of the given activity process.

The circle of persons established with regards to the joint and several liability of business associations and their founders is sufficiently, although not exhaustively, but it can be stated that the legal regulation does not differentiate between legal entities and natural persons (at least in their capacity as founders).

4.2.3. Joint and several liability of executive officers and members

Those members (shareholders) of a business association, or the owner of a sole proprietorship, and their executive officers who have supported a resolution (measure), in respect of which they knew, or should have known given reasonable care that such resolution (measure) if carried out would cause environmental damage, shall bear unlimited and joint and several liability in the event of the termination of the business association or sole proprietorship for the company's ensuing liability for remediation and compensation for damages, which the company did not satisfy (Section 102(5) of the Environmental Protection Act).

The liability of the member and the executive officer exists in the case of the dissolution of the company, so it can be applied as an underlying liability rule. The obligation for restoration costs and compensation for damages is primarily borne by the company. In the case of its termination – subject to the specified conditions – it is possible that those whose conduct can be traced back to environmental damage cannot evade liability, and in the case of the termination of the company, the possibility of liability is ensured.

4.3. Exemption from liability

In environmental law, we can talk about compensation for damage caused to others on the basis of private liability. A significant area of environmental regulation is administrative, public law liability, the primary purpose of which however, is to implement or enforce reparations in kind (restoration of the original state).

Compensation is the dominant way to create a balance of interests and values in environmental damages under private law, both in its vertical related to the protection of property and personal rights.

From the perspective of the legal basis for compensation (non-contractual, i.e. tortious) liability, it is decisive in the enforcement of claims what legal basis the plaintiff specifies in enforcing compensation, and to which form of liability under the Civil Code the plaintiff refers in submitting its claim. This can be done by referring to the general rules of compensation or by indicating the rules on liability for hazardous operations. Obviously, the reference to the liability for hazardous operation is more favourable to the plaintiff from the point of view of the burden of proof (Győr Court of Appeal, Pf.I.20.234/2015/7/I.).

The liability rule related to activities involving increased danger allows for excussion, in a rather narrow circle. While the injured party has to prove the damage and the causal link due to the centre of gravity of the burden of proof, the person who caused the damage must prove that the damage was caused by an unavoidable cause outside the scope of the activity involving increased danger. This means two but interrelated, i.e. conjunctive conditions.[43]

5. Remedies and compensation

There is no special order for the conduct of civil proceedings and the system of legal remedies, the general procedural rules apply.[44]

In a substantive sense, there are discernible specialties in terms of reparation for damages. The Civil Code emphasises monetary compensation as a method of compensation. The tortfeasor shall provide compensation in cash, unless compensation in kind is justified by the circumstances. In determining the mode of compensation, the court shall not be bound by the injured party's request, however the court shall not order any mode of compensation such that is objected to by all of the parties. Compensation may be awarded in a lump sum or in the form of an annuity, taking into account the circumstances of the case and the legal provisions.[45]

In addition to the provisions of the Civil Code, restoration in kind is the primary aspect of environmental protection and nature conservation. In the event of damage, restoration in kind must be attempted in the first place, and in this case, the damage also includes the costs of restoring the original condition.[46] An action for compensation for non-material damage arising from the deterioration of the living conditions of society or its groups may be brought by the prosecutor and the compensation awarded must be paid to the current account of the ministry headed

43 | Pusztahelyi 2015, 309–310.
44 | See another country's example: Zdráhalová & Vomáčka 2025, 237–260.
45 | Civil Code, Section 6:527.
46 | Section 81(3) of the Nature Conservation Act.

by the minister for the payment of nature conservation damages. The amount of compensation received may only be used for the implementation and support of nature conservation goals and tasks.[47]

In the case of endangering the environment or damaging the environment, the possibility can be derived from private and public law regulations that the authority or the court prohibits the person committing the unlawful behaviour from using the environment, or suspends or restricts his or her activities. This possibility also appears in the Civil Code, and these substantive rules can also be proposed as interim measures during the litigation procedure. In case of the presence of imminent danger, the endangered person shall be entitled to request the court, as it follows from the circumstances of the case a) to restrain the person imposing such danger from continuing such conduct; b) to order the person imposing such danger to take sufficient preventive measures; c) to order the person imposing such danger to provide sufficient guarantee.[48] Providing adequate security can be interpreted differently in private law and public law regulations. In private law regulation, the obligation to provide security is an opportunity and obligation to solve, avert and repair the harmful consequences of a given conduct. In public law, the law prescribes an appropriate financial guarantee for the performance of activities involving the use of the environment specified in the administrative authority licensing procedure. Examples include waste management activities or mining activities. Proof of financial security is an essential condition for the issuance of a licence, so it is a condition related to an official act.

6. Defences and limitations

The liability of those who cause damage and the possibilities for victims to assert their claims are influenced by various restrictive provisions. Claims for environmental damages usually arise from non-contractual legal relationships.

The general limitation period for civil claims is five years. The limitation period for liability for activities involving increased danger is shorter, namely three years. If the environmentally damaging behaviour also constitutes a criminal offence, the limitation period is adjusted to the limitation period of criminality. The rules governing the extension and interruption of the limitation period allow for the extension of the time limit for enforcing a claim. Injured parties can enforce their claims within the specified limitation period.

The Civil Code prohibits unlawful damage. All damage shall be considered unlawful, unless the tortfeasor has committed the damage a) with the consent of the injured party; b) against the assailant in order to prevent an unlawful assault

47 | Section 81(4) of the Nature Conservation Act.
48 | Section 6:523 of the Civil Code.

or a threat suggesting an unlawful direct assault, if the tortfeasor did not use excessive measures to avert the assault; c) in an emergency, to the extent deemed proportionate; or d) by way of a lawful conduct, and such conduct does not violate the legally protected interests of others, or if the tortfeasor is required by law to provide compensation.[49]

Any person who causes damage to another person wrongfully shall be liable for such damage. The tortfeasor shall be relieved of liability if able to prove that his conduct was not actionable.[50] The injured party is obliged to prevent, avert and mitigate damages. The tortfeasor is not obliged to provide compensation for the damage caused by the imputable breach of these obligations.

The tortfeasor must compensate for the entire damage. In the case of circumstances deserving special consideration, the court may determine the amount of compensation at a lower amount than the total damage.

Force majeure leads to exemption from liability. This statement applies to both general liability and special forms. A causal relationship cannot be established in relation to damage that the tortfeasor did not and should not have foreseen.

7. Challenges and shortcomings

Civil proceedings primarily involve claims for damages and proceedings for the protection of property rights, neighbour rights, and personal rights relating to physical and mental health. In these procedures, the prohibition of environmentally hazardous and damaging activities and financial reparation are the decisive legal consequences. If we want to draw further generalisations, then financial compensation is decisive, which in itself is not a reassuring legal consequence and a preventive tool from the point of view of environmental interests.

With regard to environmental private law damages, it is worth recalling two Hungarian cases. One of them is the cyanide pollution of the Tisza (2000), when the dam of the sludge reservoir of the Romanian gold mine burst and cyanide and various precious metals got into the Tisza, which destroyed the fish stocks and the wildlife of the river. A lawsuit was initiated, where the Hungarian state sued the mining company. The state won the lawsuit, but due to the liquidation of the company, the financial compensation (nearly 30 billion HUF) could not be collected. During the cyanide pollution of the Tisza, many private individuals and businesses found themselves in a difficult situation, such as restaurateurs in the Tisza region, etc., who did not receive compensation for their damages. The case is considered to be of such magnitude that it can be considered a catalyst for the creation of the 2004 EU Environmental Liability Directive.

49 | Section 6:520 of the Civil Code.
50 | Section 6:519 of the Civil Code.

The other case is the red sludge disaster in Ajka (2010), where the red sludge storage dam of the Ajka Alumina Plant burst and caused the most serious industrial disaster in Hungary. People died, and huge financial and environmental damage was caused. The claims for damages were enforced on the basis of the objective, high-risk liability form and the court established the liability of the tortfeasor on this basis. However, the case has shown that there is no adequate security system either in Hungary or at an EU level.

8. Future perspectives and conclusions

Hungary has fulfilled its implementation obligations on time, and in the field of environmental protection, the 'phase delay' in legislation and law enforcement cannot really be established in a legally sanctionable manner, but there are areas, e.g. the development of the security system, the implementation of which is a topical issue from both a legal and economic point of view. There is no uniform private liability law in the EU legislation, and the 2004 Environmental Liability Directive is essentially administrative in approach. There are conventions regulating civil liability in international law, which do not define the framework of liability in a general manner, but concentrate on certain activities (e.g. oil transport, etc.). Environmental protection is not a specialised area in private law. During the drafting of the Hungarian Civil Code, there was a codification proposal that defined environmental damage. However, this proposal was not finally regulated. A private law interpretation of environmental damage would be expedient from the point of view of legal theory and legal dogma.

In the field of environmental law, environmental use processes can be grouped and analysed according to different aspects. Analysing the processes of environmental use, we can conclude that there are activities that do not stop at the level of lawful behaviour but have consequences arising from an activity that need to be repaired. The principle of liability has been formulated explicitly and implicitly at the legislative level and the 'polluter pays' principle. Although the two principles are not considered synonymous, one is incorporated into the other, there is an overlap between the two principles. The joint enforcement of the two principles means that whether it is a question of lawful or unlawful conduct as a use of the environment, it may entail liability and payment obligations.[51]

In the area of environmental liability, the issue of financial security for financial settlement is essential. The process does not stop at the determination of liability and the imposition of legal consequences the legislation must also cover

51 | Csák 2011, 31–46; Csák 2008, 171; Bobvos et al. 2006, 29–54; Szabó 2007, 215–224. Cf: the Court of Justice of the European Union in Case C-378/08 and Joined Cases C-379/08 and C-380/08 (*Rada de Augusta* cases) following a reference for a preliminary ruling from an Italian court.

the elements necessary for its implementation. When determining the scope of financial coverage, the legal institutions of collateral, insurance, and provisioning came to the fore, with the proviso that these legal institutions can be interpreted as collective terms, particularly with regards to collateral and insurance. In each case, the user of the environment must bear financial burdens. In some cases, this means a specific payment obligation (fee, commission, etc.), in other cases it means the commitment of own resources and the withdrawal of funds at the expense of the environmental user. These costs will obviously appear in the price of products and services. To this end, a system operating at a reasonable cost level must be established. The establishment of a system of financial guarantees is therefore not only significant and subject to scrutiny in terms of the relationship between the law and its intended results but is also a subject of analysis in economic terms.[52]

Liability, the security system, litigation and out-of-court procedures may provide a solution in the case of damages. However, if we keep in mind the central principle of environmental protection, the principle of prevention, then a system of tools should be developed in this area. This would result in the introduction and application of environmental compliance in the case of businesses.

52 | Nagy 2011, 247–258; Olajos 2010, 199–211. See also: Erdős 2010, 132–145; Erdős 2012b, 255–271; Erdős 2012a, 38–50; Nagy 2012a, 339–350; Nagy 2012b, 1–9.

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