

Environmental Protection Liability in Hungary – The Aspects of Substantive Administrative Law¹

Abstract

This article summarises the constitutional foundations of Hungarian environmental law, the basic principles of regulation, and the rules of civil criminal and administrative liability. In the second part, we explain the regulations governing the environmental protection institutional system and the supervisory system. We describe and compare administrative sanctions in environmental protection. At the end of the article, we distinguish between the administrative and criminal law instruments of Hungarian environmental law.

Keywords: Environmental law, public administration, administrative liability, administrative sanctions

1. Legal basis

The system of obligations in the field of environmental protection is defined by the Fundamental Law. Based on this, the relevant provisions are set out in Article P, Article XX, and Article XXI.² The subjects of special protection therefore include the safeguarding of natural resources that are part of the nation's common heritage, as well as the protection against environmental impacts endangering physical and mental health. Based on regulations aimed at ensuring a healthy environment, the restoration of environmental damage is given special priority. This includes the

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1 | The research and preparation of this study was supported by the Central European Academy.

2 | See: Paulovics & Jámbor 2022, 98–111.

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obligation for the polluter to compensate for the harm caused, as well as a prohibition on importing waste from other countries for disposal.³

Our key natural resources enjoy protection under the Fundamental Law, as does human health, which is also expressly protected from environmental threats. Environmental responsibility includes restoration and holding polluters accountable for environmental damage, as well as managing waste, which is a critical risk factor. The system of obligations for environmental users and state bodies can best be characterised by the system of explicit environmental protection principles found in the Environmental Protection Act. The obligations gain meaning through the elaboration of the principles of precaution-prevention and restoration, environmental responsibility, and cooperation.⁴

These principles are formulated by Act LIII of 1995 on the General Rules of Environmental Protection as follows: Precaution, Prevention, and Restoration.

The following can be said about the interpretation of the principles. All environmental users must organise their activities in such a way as to pay attention to the environmental impacts of their activities and be generally mindful of their consequences.

If the environmental impact of an activity cannot be evaluated, we take a precautionary approach by assuming it has the most severe potential impact on the environment and act accordingly to mitigate those risks. The concept of GMO-free agriculture has been incorporated into the Fundamental Law based on the Constitutional Court's interpretation of the precautionary principle.⁵

If the environmental user's activity has a direct impact on the environment, its environmental impacts must be assessed, and measures must be taken to prevent the potential environmental damage even before the environmental pollution occurs. Impact studies for preliminary environmental permits are conducted within this framework.⁶

If the resulting danger from the activity is direct in nature, the authorising authority can specify the best available technology and the maximum, but still lawful environmental burden achievable with it (emission limit value, and technology specification in an integrated environmental use permitting procedure).⁷

If the environmental damage has already taken place, both the polluter and the injured party (in the case of environmental damage, the state and its bodies) must participate in the mitigation and in the restoration of the disturbed environmental balance. After the damage has occurred, the goal is not to restore the disturbed

3 | Csák & Nagy 2020, 41–51.

4 | On the role of environmental principles in judicial and constitutional court practice, see: Olajos & Mercz 2022, 79–97; Szilágyi 2021, 130–144; Bándi 2020, 7–22; Hojnyák 2021, 39–54.

5 | See Olajos & Mercz 2022, 79–97; Szilágyi 2021, 130–144; Bándi 2020, 7–22; Hojnyák 2021, 39–54.

6 | Csák 2024.

7 | Bándi 2024.

material balance, but to return the environment to its original state, as stated in the cited Section.

Section 10–11, state bodies, local governments, natural persons, and organisations are also obliged to cooperate according to the Environmental Protection Act and municipal decrees. Based on the Environmental Protection Act, the Hungarian state is obliged to cooperate in the international legal protection of the environment.⁸

The issue of responsibility is also laid down by the Environmental Protection Act in a separate Chapter IX, in addition to the cited Section 9. Summarising the rules on liability, we can speak of general environmental user liability, which can be further broken down into individual and joint and several liability. Beyond general liability, the Environmental Protection Act also names administrative law, civil law, and criminal law liability.

According to the interpretation of the general liability rule, the environmental user is obliged:

1. To refrain from environmentally hazardous conduct;
2. To cease environmental pollution;
3. To provide information about their activities to the authorities;
4. Within the scope of damage mitigation imposed on them, to avert the effects of the damage caused, to remove the damaging factors;
5. Within the scope of restoring the original state, to restore the service provided by the environmental element.

If the environmental user fails to meet their aforementioned obligations of liability, prevention, and restoration, and thereby endangers the environment, the authority or court may prohibit, suspend, or restrict them from the activity related to environmental use. The rules of joint and several liability for damages can be summarised as follows:

1. The owner and possessor (user) of a property shall be jointly and severally liable for environmental damage or endangerment, subsequent to the time it occurred, for damage caused to environmental elements on which the environmentally damaging or endangering conduct was carried out. This can be interpreted as an exception to this rule, “unless proven otherwise”. The owner is exempt if they disclose the actual user and prove that the liability does not rest with them. This rule applies to both stationary and mobile sources of pollution.
2. A jointly established business organisation, whose purpose is to combine previously independent activities, is liable jointly and severally with the founders as the legal successor for compliance with environmental obligations for damage caused by its operation.

3. Responsibility for corporate decisions (member-executive officer) If a decision that is known, or should have been reasonably known, to cause environmental damage is made, it leads to unlimited joint and several liability for any restoration and compensation obligations that the company fails to fulfil in the event of its dissolution. However, this liability does not apply to individuals who did not participate in the decision-making process, protested against it, or voted against it. Anyone who fails to fulfil their consequential financial liability may not, until their obligation is fulfilled, be an executive officer of a business association or private company that carries out its activities in possession of an environmental permit, an integrated environmental use permit, or a permit required by separate legislation on waste management.

We will explain the interpretation of administrative law liability rules regarding the answers given to the classification of sanctions.

2. Institutional structure

According to Government Decree 624/2022 (XII. 30) on the designation of authorities performing environmental protection authority and administrative tasks, the government designates the following bodies as environmental protection authorities:

The Minister, the Pest County Government Office, the County Government Office, the District Environmental Protection Authority, HungaroMet Nonprofit Zrt., the Lord Mayor, the Mayor, the Chief Notary of the capital, the Notary of the Municipal Self-government, the Notary of the Capital District Self-government (municipal environmental protection authorities) of the Budapest Capital Government Office, the Deputy State Secretary responsible for environmental protection authority affairs.

The National Environmental Protection Authority the Pest County Government Office (in authority issues assigned to its competence by a government decree), the Second-instance Environmental Protection Authority, the Deputy State Secretary responsible for environmental protection authority affairs.

Territorial environmental protection authority The county government office – with county competence (for the territory of Budapest capital and Pest county, the Pest County Government Office with competence extending to this area).⁹ If the route of a linear investment affects the competence area of multiple territorial environmental protection authorities, the one whose competence area is affected

9 | For the specific competence of the regional environmental protection authority, see Annex 1 of Government Decree No. 624/2022 (XII. 30.)

by a longer section of the investment route shall act (if the affected authorities jointly request it, the authority designated by the supervisory body shall act).

District environmental protection authority the district (capital district) office of the capital and county government office – with district competence (in matters assigned to its competence by government decree) As a general rule, the territorial environmental protection authority acts as the environmental protection authority.¹⁰

The Budapest Capital Government Office operates with national authority in the integrated environmental use permitting procedure.¹¹ Additionally, the National Environmental Protection Authority serves as the environmental protection authority in the environmental impact assessment procedures in the case of expressway construction; as the authority contributing to the preparation of the examination documentation specified in Act CXXVIII of 2003 on the development of the expressway network,¹² and as the environmental protection authority, it acts in procedures for spatial planning studies, route designation, new route designation,¹³ in expressway designation and holding public hearings, in forming a unified position,¹⁴ in informing the transport authority as an environmental protection authority,¹⁵ and in the preliminary procedure and public hearing for new route designation,¹⁶ in the preliminary examination and impact assessment procedure for issuing an environmental permit,¹⁷ in publicising the decision,¹⁸ and in revoking the environmental permit¹⁹ for work not commenced within 5 years.²⁰

The Deputy State Secretary responsible for environmental protection matters exercises authority at the national level pursuant to the powers conferred by government decree. Pursuant to Government Decree No. 624/2022 (December 30) on the designation of authorities performing environmental protection and administrative tasks, the government designates the following bodies as supervisory and regulatory environmental protection administrative bodies: the Deputy State Secretary responsible for environmental protection matters, the National Environmental Protection Authority, the Regional Environmental Protection Authority, and HungaroMet Nonprofit Zrt.

The regional environmental protection authority acts as an environmental administrative body with special jurisdiction in the cases specified in Annex 2.

10 | Act LIII of 1995 on the general rules of environmental protection (Kvt.), section 66 (1b).

11 | Section 66 (1) a) of the Kvt.

12 | Act CXXVIII of 2003 tv para. 5 (3).

13 | In Section 6, paras. (1), (3) and (4) Act of CXXVIII of 2003.

14 | In Section 9, paras. (2) and (3) of the Act of CXVIII.tv 2003.

15 | Act of CXXVIII.tv 2003 section 10.

16 | Act of CXXVIII.tv 2003 section 12, para. (1) above.

17 | Section 67 (1) and (2) of the Civil Code.

18 | Kvt. Section para. (1) a. and b.

19 | See section 71 (3) of the Civil Code.

20 | Section 72 of the Civil Code.

The powers relating to authorities acting in special administrative matters are as follows:

The Deputy State Secretary responsible for environmental protection matters shall perform the tasks related to Hungary's membership in the European Union's Environmental Law Enforcement and Implementation Network (IMPEL). As the environmental administrative body responsible for operating the environmental information system: HungaroMet Hungarian Meteorological Service Nonprofit Private Limited Company is responsible, at the national level, for the operation of the measurement, observation, and monitoring network.

HungaroMet performs its duties in accordance with the government decree on Hungary's national meteorological service and meteorological activities, as well as in accordance with the government decree on air protection.

With regard to the operation of the National Environmental Information System, the National Environmental Protection Authority, the Regional Environmental Protection Authority, or the Deputy State Secretary responsible for environmental protection matters exercise national jurisdiction in matters falling within their scope of responsibility.

Within the scope of his or her core responsibilities, the Deputy State Secretary for Environmental Affairs, at the Minister's request, makes available the data generated in the course of his or her activities that is necessary for the conduct of government business; analyzes and evaluates the implementation of legislation pertaining to his or her duties and powers; expresses opinions on draft legislation pertaining to his or her duties and powers; acts independently within the scope of his or her duties.

With regard to the following tasks, he or she cooperates in the performance of international duties at the request of the Minister:

Performs continuing education tasks; collects and makes available to the OKIR (National Environmental Information System) the data necessary for the operation of the OKIR, and cooperates with other monitoring and information systems; maintains and updates the registry and the related spatial representation based on data provided by polluting facilities.

The Territorial Environmental Protection²¹ Authority, within the scope of its fundamental state activities, collects and provides data necessary for the operation of the OKIR, and cooperates with other control and information systems; cooperates in the execution of international tasks; provides opinions on regional development concepts and programmes, spatial plans, settlement planning tools; makes data obtained on the state of the environment accessible and provides information about them; provides data on regional environmental hazards and damages to the Deputy State Secretary responsible for environmental protection authority affairs, participates in awareness-raising tasks, prepares measurement

21 | Its legal basis is Government Decree 624/2022. (XII. 30.).

plans for air purity protection measurements and noise measurements. Supervisory, legality, and professional powers are exercised by the Minister responsible for environmental protection, the Minister responsible for energy policy, and the Deputy State Secretary responsible for environmental protection authority affairs.

If a supervisory procedure is initiated against a decision of the National Environmental or Territorial Environmental Protection Authority that also includes findings related to nature protection/water management/water protection, the Deputy State Secretary responsible for environmental protection authority affairs shall obtain the opinion of the Minister responsible for nature protection/the National Water Authority/the National Water Protection Authority.

The annexes of Government Decree 624/2022 (XII. 30) on the designation of authorities responsible for environmental protection supervision and administrative tasks outline the professional questions to be examined in the procedures of the environmental protection authority: professional questions to be examined during the preliminary examination, environmental impact assessment, integrated environmental use authorising procedure, consolidated procedure, and review procedure [Annex 3] professional questions to be examined in certain environmental protection procedures [Annex 4] professional questions to be examined in liquidation and winding-up procedures [Annex 5] professional questions to be examined in procedures related to air protection [Annex 6]. Further annexes specify the special competence of Territorial Environmental Protection Authorities [Annex 1], the special competence area of environmental administrative bodies [Annex 2], and the competence area of county government offices operating regional laboratories [Annex 7].²²

3. What is its relationship with other administrative bodies (e.g. ministries, environmental agencies, prosecutor's offices)?

In matters related to the environment, the Prosecutor's Office has the authority to take certain actions. These include filing a lawsuit on behalf of the state for compensation for damages caused by environmental harm,²³ as well as initiating judicial annulment of decisions that have been identified as unlawful in the prosecutor's admonition but have not been amended by the relevant authority. The prosecutor is therefore obliged in all cases, before filing a lawsuit, to call on the authority to cease the infringement within its own competence. The call has a deadline; as a general rule, it can be made within one year from the date the

22 | See: Fiknérné Schulz 2024, 1–6.

23 | See Act CLXIII of 2011 on the Public Prosecutor's Office, hereinafter referred to as section 27(3) of the Public Prosecutor's Office Act.

decision becomes final. In addition to decisions, appealable orders can also be challenged with a call. The addressee of the call can be the authority that made the decision itself or its supervisory body, and it aims for the authority to withdraw or modify its decision, or for the supervisory body to annul or change it, or to remedy its omission, to make a substantive decision in the case. Chapter IX of the Ákr. (Act on General Administrative Procedure) lists prosecutorial action and admonition among the decision review procedures. The review following a prosecutor's admonition is special compared to other *ex officio* procedures in that it can take place within one year of the decision becoming final, even if it infringes on rights acquired and exercised in good faith. This rule is of particular importance in the case of activities commenced based on unlawfully issued permits. In the case of a substantive infringement detected during the exercise of the legality supervision power, the prosecutor may initiate a judicial review of the decision.²⁴

Pursuant to paragraph 327/A (1) of the Pp. (Code of Civil Procedure), this can arise if the decision still does not comply with the legal provisions after the expiry of the deadline set in the prosecutor's admonition for remedying the illegality. If the infringement includes the authority's omission, failing to fulfil its procedural obligation, paragraph 122 of the Ákr. authorises²⁵ the prosecutor to turn to the court. In this case, it is necessary that the deadline specified in the prosecutor's admonition has passed without success. Additionally, the prosecutor's new authority to protect public interest differs from the previous regulations in that it cannot be exercised on its own initiative, or *ex officio*; an investigation substantiating the action can only take place if data or other circumstances that have come to the prosecutor's attention strongly indicate a serious illegality, omission, or unlawful situation.

How can such circumstances come to our attention? The government offices send their binding, prohibiting decisions, and fine-imposing decisions to the Prosecutor's Office for information. We assess these decisions from two perspectives. On one hand, the facts learned this way may serve as a basis for filing a lawsuit for prohibition or compensation; on the other hand, within the framework of the legal supervisory power, we can examine the legality of these decisions, as well as whether the environmental authorities are effectively enforcing them, potentially through enforcement procedures.

Prosecutorial action in environmental matters is therefore twofold. On one hand, it is of a civil law nature, aiming at prohibition or compensation; on the other hand, it aims to eliminate the infringement, ultimately by initiating the judicial review of administrative decisions. In Somogy county, we have used both tools. For the Prosecutor's Office, environmental cases are of high priority within the public interest protection field, which is also reflected in its organisational structure.²⁶

24 | See section 2) (5) of the Penal Code.

25 | See: Act CL of 2016 on the general rules of administrative procedure (Ákr.), sections 111–112.

26 | For more information on the environmental protection responsibilities of the Public Prosecutor's Office, see also: Havasi 2022, 204–223 and Bérczesi 2001, 18–29.

At the Prosecutor General's Office, a dedicated department, along with designated prosecutors in each county, addresses this responsibility.²⁷

4. Scope of competencies and inspection authorisations

Neither the Environmental Protection Act nor the government decree on environmental authorising specifies the special tasks and inspection authorisations of the authority responsible for environmental matters. Therefore, the rules outlined in the Ákr. concerning on-site inspection memos and minutes must be followed. The key difference between the two legal frameworks is that when the authority speaks with relevant witnesses regarding a case, the time and place of the statements, along with the pertinent details of what was said must be documented in the minutes. This can be supported by video and image recordings made on-site. If, despite coordination efforts, the site remains inaccessible, or if there are important observations to document, an on-site memo will be prepared. This memo can then serve as the basis for initiating the administrative procedure. One possible procedure that may be launched is an environmental review, which will be based on the documentation collected on-site. The procedural details of this review are outlined in the first section of this study.²⁸

Environmental permits are valid for a fixed period. After the permit expires, the environmental user is obliged to initiate the extension of the existing permit. The extension of such permits functions as a routine inspection. At this time, according to legal requirements, the actual extent of environmental use should be checked and compared with the preliminary estimated values specified in the permit. However, this does not happen due to a lack of instruments or experts. If this occurs, it must be documented in the operational permits issued during the review. This documentation was missing from the 30 permits we examined.²⁹

In connection with integrated environmental authorising, the inspection of the specified environmental use limit values is mandatory; these are generally recorded in the decisions, but not as actual measurements, but as data provided by the environmental user.³⁰

A permanent telephone customer service operates at the environmental departments of the government offices, where the designated public official is

27 | Horváthné Márkus 2016, 41–43.

28 | Questionnaire for Environmental Protection Department staff, questions 1–5 on environmental inspectorate – Miskolc, August 14, 2025, hereinafter referred to as Questionnaire (2025).

29 | For more information on environmental responsibility, see: Winther 2008, 163–191; Kramer Machado 2022, 40–61.

30 | Under Hungarian law, the primary objective of environmental liability is remediation; administrative, criminal, and civil liability are subordinate means of achieving this objective. In this regard, see: Csapó 2007, 139–157; Csapó 2015; Tahiné Kovács 2004; Tahiné Kovács 2005, 123–132; Tahiné Kovács 2023, 1–9.

obliged to record the substance of the telephone report and take the necessary measures. If immediate action is required, the official on duty immediately notifies the head of the department.

Among the representatives of the relevant departments – the waste, noise, and soil protection officials, as well as the senior official coordinating the authority's work and responsible for the response team – have a duty to take action. If the investigation of the causes of environmental pollution falls within the jurisdiction of the environmental protection authority, the official required to take action must prepare a report.³¹

In the event of an emergency, it is important to consider the role of the environmental user in contributing to the situation. This relates to the enforcement of the 'polluter pays' principle and how those involved cooperate to mitigate the consequences of the emergency. These are primarily involved in the enforcement of sector-specific regulations, such as fines for water pollution.

When a water pollution fine is imposed, the environmental user who promptly reports the pollution and actively contributes to the earliest possible mitigation of its consequences according to their financial capacity, and who follows the instructions of the relevant disaster management and environmental authorities involved in mitigating the results of the pollution, receives the basic case for the fine.

Environmental inspection: any activity – including on-site inspection, as well as checking emissions, internal reports, and monitoring documents, verifying self-monitoring, checking the adequacy of applied techniques and the facility's environmental management – which the environmental authority performs or has performed in order to check and promote compliance with the conditions included in the facilities' permits, and – if necessary – to monitor the environmental impacts of these facilities.³²

The monitoring system outlined in the decision regarding the environmental permit, issued after the environmental impact assessment, must specify the types of parameters to be monitored and the duration of this monitoring. This should be done while considering the nature, location, and scale of the activity, as well as the extent of its environmental impacts, all while ensuring that the approach remains proportionate.³³

The environmental authority monitors the implementation of the activity in accordance with the permit, as well as the execution of measures necessary to avoid, prevent, reduce, or offset significant adverse environmental effects – according to the provisions in this decree and in regulations for individual environmental elements and factors, with official inspection as required.³⁴ In an integrated

31 | Government Decree 404/2004 (July 21), sections 31 and 36 and Annex 2.

32 | See: Government Decree No. 314/2005 (XII. 25.) on environmental impact assessment and integrated environmental licensing procedures, hereinafter referred to as Khv. Decree, section 2 (j).

33 | See: Khv. Decree sections: 10, 8, 9 Point of ba. and section 10, para. (4a).

34 | Khv. Decree section 11/B.

environmental authorising procedure, the applicant must attach the methods for monitoring emissions as part of the summary related to the initiative.³⁵

The environmental authority, in coordination with the water protection authority, prepares an environmental inspection framework plan for the facilities under the scope of integrated environmental authorisation operating in its area of competence, which it updates at least annually, and which includes at least the following:

- a) the subject of scheduled inspections, the inspection period, the schedule, and means of inspection;
- b) a general assessment of significant environmental problems regarding the geographical area and facilities affected by the inspection framework plan;
- c) the delimitation of the geographical area covered by the inspection framework plan;
- d) an identification list of the facilities covered by the framework plan;
- e) aspects for conducting regular and extraordinary inspections;
- f) the frequency of on-site inspections for each facility, determined based on the environmental risk assessment criteria – which for the highest-risk facilities cannot exceed one year, and for the lowest-risk facilities, three years;
- g) provisions for cooperation with other authorities possibly involved in the environmental inspection. Based on the inspection framework plan, the environmental authority prepares an annual inspection plan.

The environmental authority, in cooperating with the water protection authority, conducts an on-site inspection at the facilities under the scope of integrated environmental authorisation in the year following the commencement of the activity, and thereafter with the frequency specified in the inspection framework plan.

The environmental authority – in cooperation with the water protection authority when water, as an environmental element is involved – conducts an immediate extraordinary inspection of facilities covered by integrated environmental authorisation. This occurs if a complaint is received regarding a significant environmental impact related to the activity or if an unexpected event happens that justifies concern due to its significant environmental impact.

Based on the findings of the inspection, the environmental authority takes the necessary measures. If, during the on-site inspection, the environmental authority establishes an environmental hazard or pollution, it will repeat the on-site inspection within six months of the first inspection. In the event of the application of a new technology, the environmental authority evaluates the results of the emission monitoring at least annually, based on data submitted by the operator, to ensure that emissions under normal operating conditions do not exceed the emission levels associated with the best available techniques.³⁶

35 | See: Khv.Decree section 21, para. (1a), pt. e.

36 | Khv Decree section 22, paras. (3)–(9).

5. Interaction with administrative sanctioning and compliance mechanisms

Procedures are initiated upon request when permits with a fixed term expire. If the environmental user exceeds the limits of use based on public reports, the authority is obliged to investigate the reports made in person or by phone. Reporting is facilitated by the waste radar application³⁷ introduced after 2020, in which the person reporting can specify the coordinates of the illegally placed waste and can also attach photos.³⁸

The authority is obliged to check such reports on-site, identify the person or organisation responsible for the odour, noise, and waste impacts, and the official memo thus prepared will be the basis for initiating authority procedures.

The environmental authority, acting within its own competence, is obliged to involve the specialist fields it considers affected. In the previous procedure, this was the mandatory contacting of specialist authorities.³⁹

With the creation of a unified mid-level public administration, the previously independent authorities, specifically named as specialist authorities, were integrated into the government office. The exception to this is the Regulated Activities Supervisory Authority, which performs specialist authority tasks regarding tobacco and mining supervision, and which the environmental authority is obliged to contact as a specialist authority in the context of environmental authorising.

Inquiries within the government office have become completely informalised. The acting case officer and the department head supervising their task performance decide which (actually interested) bodies to contact, in what form, based on the relevant provisions of the organisational and operational regulations (SZMSZ).⁴⁰

The request for contact can be made orally or in writing; the responses received are summarised by the acting case officer and recorded in the decision. The decision of the acting case officer is initialled by the competent department head and signed by the head of the main department under the right of issuance.

The authority to issue decisions lies with the government office, and the head of the office determines whether to make important environmental decisions based on a professional expertise or to exercise their right to provide instructions related to the content of the decision, as guided by the organisation of the office.

37 | The application is available at: hulladekradar.hu.

38 | Answers to questions 8–9 of the Questionnaire.

39 | Answers to questions 10–12 of the Questionnaire.

40 | Compare your Answers to questions 10–12 of the Questionnaire with the provisions of Instruction 15/2024 (VI.24) KTM on the organisational and operational rules of the capital and county government offices.

The Constitutional Court examined the issue of abolishing the specialist authority system and the procedure for contacting internal organisational units at the time of its introduction. During the integration of the system into the government office, it made the following findings:

The specialist authority procedure signifies the special order of joint decision-making between the authority and the specialist authority. Its peculiarity is that the specialist authority, exercising its public authority, gives a binding opinion to the authority, which incorporates it into its decision with unchanged content.

The function of the specialist authority procedure is that a decision, contained in a single resolution, is born from the mandatory cooperation of specialist administrative or general administrative bodies belonging to the executive branch.

In other words: the specialist authority procedure serves the convenience of the clients, as they do not have to obtain various authority decisions to settle a single matter. The specialist authority procedure was thus brought to life by practicality.⁴¹

It follows from this that the specialist authority procedure loses its function as soon as the authority entitled to make the substantive decision acquires the competence and resources necessary to judge the specialist question. In this case, contacting the specialist authority becomes unnecessary.⁴²

Several significant differences can be established between specialist authority involvement and answering the specialist question within the organisation (or between organisations with the same competence) in terms of the legal characteristics of the procedure. The Constitutional Court points out four differences below.⁴³

On one hand, the specialist authority's opinion is legally binding for the head of the requesting authority.⁴⁴ On the other hand, the specialist authority's binding opinion is included in the operative part of the authority's decision; it is one of its mandatory elements by an express legal provision.⁴⁵

Thirdly, it is a separately named ground for nullity if the decision was made without the mandatory involvement of the specialist authority or by disregarding the specialist authority's opinion.⁴⁶

41 | Decision 4/2019 (III. 7.) AB: on the determination of constitutional requirements related to section 66/A (1) of Act LIII of 1995 on the general rules of environmental protection and sec. 38/A (1) of Act LIII of 1996 on nature conservation, as well as on the determination of constitutional requirements related to section 38/A (1) of Act LIII of 1996 on nature conservation and section 38/A (1) of Act LIII of 1996 on nature conservation, as well as on the determination of constitutional requirements related to section 38/A (1) of Act LIII of 1996 on nature and the determination of an omission arising from art. P (1) and Art. XXI (1) of the Fundamental Law, hereinafter referred to as 4/2019 (III.7) AB hat. [53].

42 | 4/2019 (III.7) AB hat. [54].

43 | 4/2019 (III.7) AB hat. [75].

44 | 4/2019 (III.7) AB hat. [79].

45 | 4/2019 (III.7) AB hat. [78].

46 | 4/2019 (III.7) AB hat. [83].

Finally, it must be highlighted that the specialist authority's binding opinion also differs significantly from the answer given to a specialist question in terms of ensuring legality.⁴⁷

Based on all this, the Constitutional Court, in point 2 of the operative part, based on paragraph 46 (2) c) of the Abtv. (Act on the Constitutional Court), established that the essential content of the current procedural regulation is deficient. It does not state that the acting administrative authority must make an express finding in the operative part of its decision about the effect of the activity, carried out based on the permit, on the environment and nature protection.⁴⁸

6. How are the different types of administrative infringements (general, strict liability, hybrid) defined in Hungarian environmental law, and what sanctions are most commonly applied?

The instrumental nature of environmental legal liability follows from the principle of restoration. Thus, the primary function of every legal instrument is to restore the disturbed environmental balance; therefore, the *ne bis in idem* principle – prohibiting the parallel application of criminal and administrative instruments – does not primarily apply here. This means that if, due to a change in the conduct of the offense, the ongoing administrative procedure turns into a criminal procedure, it is not necessary to terminate the administrative procedure when the criminal procedure is initiated, if justified by the interests of restoration. This principle is strongly applied in waste law, where Act CLXXXV of 2012 on waste, in Section 3(e), names the 'polluter pays' principle as a fundamental principle, as follows: e) the 'polluter pays' principle: the waste producer, the waste holder, or the manufacturer of the product that has become waste is responsible for the management of the waste and for paying the costs of waste management; According to these principles, the waste producer, holder, and the manufacturer of the product that has become waste have a waste management obligation, and they also bear the costs of waste management, which also includes the costs of legally regulated measures. Characteristics of administrative liability applicable in Hungarian environmental law:

1. It can be imposed in case of violation of legislation or a decision, or failure to fulfil an obligation. It is an objective legal instrument, independent of culpability. Exemption from administrative law liability can occur in two cases:
2. damage caused by armed conflict, natural disaster;

47 | 4/2019 (III.7) AB hat. [84].

48 | 4/2019 (III.7) AB hat. [93].

3. the damage is the direct result of the execution of a final and binding decision. Legal scholarship identifies the obligations of the environmental user from Section 101 of the Environmental Protection Act by prescribing the following conduct: The environmental user is obliged: to take the preventive measures for environmental damage specified in a separate legislation, and in the event of environmental damage, to take restoration measures, as well as to provide information.

The rule regarding the payment of fines is as follows: Anyone who breaches a requirement set out in legislation, an official decision, or a directly applicable community legal act, or exceeds a limit value, may be obliged to pay a fine proportionate to the extent and severity of the environmental damage. Payment of the fine does not exempt the violator from criminal liability, liability for damages, or the obligation for restoration: Characteristics of the imposed fine: Establishing the unlawful conduct is sufficient for its imposition. Culpability may only be considered in aggravated cases, and this may be the basis for establishing criminal liability. A portion of the aggravated and privileged cases goes into an environmental protection target fund or a municipal environmental protection fund. Named types of fines: sewer, water pollution, land protection, waste management, air quality protection fines.

Among the fine types involved, the waste management fine is considered to be the harshest sanction, as the imposition of the administrative sanction here does not exempt from misdemeanour, criminal, or compensation liability, as declared by the Waste Act itself.

The provision itself can be derived from the ‘polluter pays’ principle, which is declared as a fundamental principle in waste law. The fine itself most closely resembles the structure of a criminal norm; it has privileged and aggravated cases, and forms of commission that exclude the application of privileged cases.

Although most of the fine is state revenue, 30% of it is received by the local government. If the municipal cooperating authority discovers the infringement on the spot, the revenue becomes municipal revenue.

7. How is the boundary between administrative and criminal liability determined in practice?

The right to the environment is an autonomous and self-contained institutional protection, i.e. a specific fundamental right whose objective institutional protection side is predominant and decisive.

The right to the environment elevates the guarantees of the state’s fulfilment of its environmental protection duties to the level of fundamental rights, including the conditions for restricting the achieved level of environmental protection.

Constitutional Court Decision 28/1994 (V. 20) AB ruled that the right to a healthy environment also includes the state's obligation not to reduce the level provided by nature protection legislation, unless this is unavoidable for the enforcement of another fundamental right or constitutional value.

In addition to establishing the aforementioned principle of the prohibition of regression, the Constitutional Court continuously interprets and holds the legislator accountable for the principles of precaution, prevention, and restoration in connection with the prohibition of regression.

The right to the environment is distinguished from other fundamental rights by its specific relationship to subjective rights, as well as by its own subject matter. The right to the environment, as is well known, cannot be classified among the classic defensive fundamental rights, but is a so-called third-generation constitutional right.

Thus, it is a right that the state recognises and enforces in its capacity as such. Most of the subjective rights used in environmental protection do not serve a specifically environmental purpose, but among others, can be used for this purpose.

The closest connection is with the right to life; the right to the environment is actually one part of the objective institutional protection side of the right to life.

The peculiarity of the right to the environment lies in the fact that its subject could actually be humanity and nature. This is vividly illustrated by all those efforts that wish to grant rights to nature, or in its representation, to animals, plants, etc., or speak of the rights of unborn generations.

The right to the environment guaranteed in the Fundamental Law signifies the state's duty to protect the environment and maintain the natural forms of life. Here, therefore, the state must also substitute the function of subjective rights with legislative and organisational guarantees. Therefore, the measure of institutional protection for the right to the environment is not arbitrary.

The level of protection is influenced by the finite nature of the natural forms of life, the irreversibility of a significant part of natural damage, and finally, the fact that all these are conditions for the survival of human life.

All this demands that the protection of the right to the environment by legislation be particularly strict compared to other rights. Due to these peculiarities, prevention has priority among the tools for protecting the right to the environment, since the subsequent sanctioning of irreversible damage cannot restore the original state.

National regulation concerning the environment and all its elements is extensive, encompassing the voluminous and constantly changing system of administrative norms; there is multifaceted sectoral regulation, and its administrative and commercial elements are influenced by economic regulators. The arsenal for law

enforcement and protection affects several branches of law, appearing not only in criminal legislation but also in the field of civil law.

A key feature of our environmental law enforcement is that both the Environmental Protection Act and the Nature Conservation Act allow for parallel liability. This means that a violation can result in fines from administrative authorities without exempting the offender or polluter from criminal or misdemeanour charges, compensation claims, or liability. Additionally, these authorities have the power to impose prohibitions or obligations on the violators.

The law classifies the most serious cases of violation of environmental legislation as crimes. Criminal law, in accordance with the *ultima ratio* principle, is the last resort among the tools of state intervention, applied when other sanctions are not effective enough to protect the legally protected interest. According to the Constitutional Court's interpretation, criminal law is the capstone of the legal system, assuming the necessity and proportionality of the intervention. Consequently, it cannot replace other tools, but is located at the tip of the 'iceberg' of tools. Criminal law can be a tool for punishment, reparation, and prevention, but it cannot solve the underlying social problem that gives rise to the crime. It is difficult for the judiciary to argue in a case where, for example, protected animal species are destroyed out of necessity for food or subsistence, or a strictly protected plant is used for firewood. A so-called 'environmental law socialisation' is a complex social and economic problem, for which criminal law cannot be the sole solution, but only one of the tools.⁴⁹

Whether principles reserved for the differentiation of criminal law and misdemeanor law and the application of sanctions, such as the *ne bis in idem* principle mentioned in the administrative part of this study can be enforced in the judiciary depends on whether the legislator defines the regulated area as part of environmental law or differently.

One area where the relevant rules are undergoing change in recent constitutional case law is the field of individual animal welfare. Here, in the application of jointly applicable administrative, civil, and criminal sanctions, the Constitutional Court has taken the *ne bis in idem* principle into account.

It has therefore declared the application of the sanction of disqualification in the context of animal welfare damages unconstitutional, and in parallel administrative and criminal proceedings, the sanctions raised in the preceding procedure determine whether this sanction can be applied in the subsequent procedures or not.

49 | For a comparative analysis of criminal sanctions for illegal waste disposal, see: Uhri & Nemes 2024, 225–253.

8. Future prospects and conclusions

The current system is challenging to maintain due to the issues outlined in section 5. This system relies on independent and specialised authorities, which are responsible for administering, enforcing and managing civil and criminal liabilities. It is structured around a permitting process that designates specific competencies, jurisdictions, and inspection phases to the authority responsible for both permitting and inspection tasks.⁵⁰

It would be simpler to assign the responsibility for complying with the requirements to the environmental user at the start of operation, which could be followed by a prohibition of the activity during an administrative inspection and continuation only after complying with the specific requirements. This system would place less burden on the state, and the environmental users would employ the appropriate experts.⁵¹

However, the solution drawn from the questionnaire responses might run into the prohibition of regression, analysed in detail by the Constitutional Court, so in the case of its constitutional analysis, there would be a risk of it being in conflict with the Fundamental Law.

The IT systems and tools installed in the administrative system are 10–15 years behind the contemporary state of digital technology. Without first replacing these systems and tools, further technical developments are pointless. In addition, it would be important to introduce and apply generally accepted Microsoft systems instead of using open-source systems (LibreOffice).⁵²

Unfortunately, due to the centralisation and large size of the mid-level public administration, along with the absence of an independent authority system, the environmental organisation system operates as part of government offices.

As part of a larger system, it cannot be held accountable on its own. The central administration of environmental protection is currently divided among three state secretariats within two ministries. The distribution of responsibilities, along with the coordination of areas that fall under multiple authorities, creates challenges and results in separable powers. In the existing governmental structure, the ministries are tasked with both economic and environmental protection functions simultaneously.

Separating these functions and having a central management dedicated solely to the assertion of environmental aspects and principles would increase the efficiency and transparency of this organisation.

50 | AJBH-1495/2019, 26–30 and 2021.El.II.JGY.K.1, 187–203.

51 | Questionnaire Answers to questions 24–26.

52 | Questionnaire Answers to questions 27.

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