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Collective Redress as New Institution of Civil Procedure Code and Its Applicability to Protect Environment**

The class action was an invention of equity, mothered by the practical necessity of providing a procedural device so that mere numbers would not disable large groups of individuals, united in interest, from enforcing their equitable rights nor grant them immunity from their equitable wrongs.[1]

1. Introduction

The right to healthy environment is a fundamental right, so in the case of this right we can apply the necessity-proportionality test. The Constitutional Court has interpreted it in its decision 18/1994. (V.20.), which interpretation is still applicable. In its disposition the Constitutional Court stated that right to healthy environment includes the state is obliged not to decrease the level of environmental protection provided by law. The Fundamental Law contains that anyone who causes damage to the environment shall be obliged to restore it, as an incorporation of the polluter pays principle. This principle could be related to Article P) of Fundamental Law of Hungary, where legislator was drawn up the mandatory liability of protection of environment. The above mentioned decision of Constitutional Court pointed out the obligation of restoration of damage caused to environment arise also from the rules of protection of property. This right is protected by the state by ensuring many measures, like setting up environmental laws or the institution of Vice Commissioner for Fundamental Rights for the Protection of Future Generation.[2]

It is typical in the case of damages caused to environment, that individual claims are (relatively) limited, small, but on the whole are very significant. In the case of low value claims, when the benefits expected from litigation are not exceeding the attached disadvantages and costs, it is not sure that litigation means a beneficial solution,[3] so if the aggrieved parties should be claim one by one that probably would reduce the effectiveness of litigations. By the way of collective redress plaintiff do not

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** *This study has been written as part of the Ministry of Justice programme aiming to raise the standard of law education.*

[1] Montgomery Ward & Co. v.Langer, 168 F. 2d 182, 187 (8th Cir. 1948).

[2] Kommentár Magyarország Alaptörvényéhez, XXI. cikk, Wolters-Kluwer, in: https://uj.jogtar.hu/#doc/db/1/id/A1100425.ATV/ (10.10.2017).

[3] Bencsik Klaudia*:* A class action eredete és kialakulása a polgári perjogi kodifikáció tükrében, in: http://epa.oszk.hu/02600/02687/00006/pdf/EPA02687_jogi_tanulmanyok_2014_654-663.pdf (15.11.2017) 2014, 655. and Mariolina Eliantonio: Collective Redress in Environmental Matters in the EU: A Role Model or a 'Problem Child'?, *Legal Issues of Economic Integration* 2014/3, 257-259.

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have to give up legal representation, thus increasing the chance of initiating the procedure, furthermore it might have positive impact on the defendant's future behaviour by determent from violations of law in the future. Beside the parties, it is beneficial to jurisdiction too: e.g. the workload and cost of administration of courts are decreasing; judicial precedents will be more uniform, etc.[4]

The introduction of collective redress in the Hungarian legal system is not a new idea, but this objective of increasingly importance in other European countries could be reached by constituting the new civil procedure code.[5] This paper describes the archetypes of collective redress, namely the opt-in and opt-out systems first, after the new procedural rules come into force on the 1st of January, 2018, last but not least those environmental claims where collective redress would be applicable.

2. The (arche)types of collective redress – the introduction of opt-out and opt-in systems

We shall have a look at the existing systems because it is true that all models of collective redress based on the American class action,[6] but this type of system does not exist in its pure form in any European country, and we could find different hybrid permutations around the Continent. That is why we cannot talk about uniform rules in this field of law,[7] and the only thing we could do to distinguish some aspects to classify these models.[8]

From our perspective the most important aspect of classification is participation, on which we could distinguish three systems: opt-out, opt-in systems and systems which are mixtures of the both aforementioned systems. While opt-in systems based on expressed participation, opt-out model considers everybody the member of the class who are corresponding the criteria of well-defined class. These members would have to exert activity if they would leave the class.

2.1. Opt-out system

The opt-out system, or also called public enforcement is more effective in cases of cease and desist violations of law, as in the case of indemnification. Usually it consorted with active judicial case management. The main point of this system is that the plaintiff, in the name, but without the authorisation of the members of a class is a

[4] Bencsik 2014, 655-656. and Harsági Viktória: A kollektív igényérvényesítés fejlesztési lehetőségei, *Acta Univ. Sapientiae, Legal Studies*, 2015/4, 217-218.
[5] See The Commission 2013/396/EU Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (2013/396/EU).
[6] See Bencsik 2014, 658-660, Harsági 2015, 220-223. and Dave Roos: How Class Action Lawsuits Work in: https://money.howstuffworks.com/class-action-lawsuits1.htm (31.10.2017)
[7] See Harsági: A modellválasztás dilemmái a kollektív igényérvényesítés hazai szabályozásánál, *Eljárásjogi Szemle,* 2016/1. 25-26.
[8] See detailed in Bencsik 2014, 657-658.

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person or an association entitled by law, and the binding force of taken judgement extends ipso iure to the well-defined members of the group without being at law. The right of initiating the procedure is often exercised by non-profit organisations, associations, in some jurisdiction labour organizations, professional chambers, prosecutors, and in Scandinavian countries the consumer ombudsman. Their purpose is to enforce the (public)interests defined by law, and not the rights of individual class members.[9]

Opt-out system seems more radical then the opt-in system, so it is applied in less European countries, and these countries try to limit the scope of application too. Critics mostly complain about members of the class do not get appropriate information about the case, and the inactivity is considered as permission to be represented by the representative plaintiff and that is the cause they do not grab the opportunity to opt-out, which could be considered as the violation of right to be heard and their autonomy.[10] Legal literature emphasizes parties have to have the opportunity to decide if they would like to take part in a procedure which has an effect on their substantive rights or representation, because these questions may result in constitutional problems and the violation of right to fair trial.[11] According to others these rights are granted by the opportunity to opt-out on the other hand. [12] But the biggest advantage of this system is strenghtening access to justice, not to mention that the total value of claims may be clearly defined and the distribution between individuals is also clear.[13]

2.2. Opt-in system

In this system the person of plaintiffs is known and identified. Still the basis of collective litigation is that the court has to judge one typical claim, i.e. one legal and factual ground to be enforced, not all the claims of plaintiffs one-by-one. The effectiveness of opt-in system is arisen from the fact, that all members of the class considered being plaintiffs, but they cannot exercise procedural rights particularly. Moreover, this leads us to other important questions in these types of cases, namely the person of representative plaintiff and the instruction given him by plaintiffs. This model has several advantages, e. g. members of the class are fix in person, the respect of party autonomy, etc. But the disadvantage is whether sufficient number of plaintiff are joined the class or not?[14]

[9] Harsági 2016, 26-27.
[10] Harsági 2015, 219.
[11] Harsági 2015, 225-226.
[12] Nagy Csongor István: The European Collective Redress Debate After The European Commission's Recommendation – One Step Forward, Two Steps Back?, *Maastricht Journal Of European And Comparative Law*, 2015/4, 537.
[13] Harsági 2016, 29.
[14] Harsági 2016, 29.

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3. Collective redress in the new Hungarian Code of Civil Procedure

The introduction of collective redress into the Hungarian legal system is not a new idea, since the T/11332. Bill of 2010 also proposed the introduction of group litigation, but this bill failed.[15] The establishment of this new legal institution was the effect of codification of the new civil procedure. The Government decided on a comprehensive codification of civil procedure in its 1267/2013. (V.17.) government decree. According to the governance the purpose of review was to create a modern Code of civil procedure, which corresponds to international practice and expectations, ensures effective enforcement of substantive rights, and upon which the results of jurisprudence and judicial precedent regulates procedural questions in a clear, coherent way, attention to technical achievements, making it easier for the citizens seeking legal advice and legal professionals to litigate. After extensive preparatory work the new Act on Civil Procedure was adapted on the 22th of November, 2016, and two types of collective redress mechanism, public enforcement and collective litigation became the part of Act CXXX of 2016.

Currently the civil procedural rules in force know only the institution of actio popularis. Gelencsér defined public enforcement as it aims to settle the disrupted balance between litigants in private law cases and to reach the most effective legal protection, it is an instrument of legal protection to facilitate public or community interest, which is applicable only by organisations authorised by law, which results in a decision has legal effect to all the parties who are not litigating, but (materially) interested, in the case of successful vindication.[16] The constitutional basis of right initiate procedure defined in a particular act is public interest, or the circumstance that in these actions the authorised organisation enforces a kind of private interest others not initiated, which becomes public interest by its difficulty or obstacles of enforcement other's interest.[17]

3.1. Public enforcement

The procedural rules of public enforcement is applied if the act, gives the authorisation to submit a claim to protect public interest,[18] prescribes that this kind of action shall be conducted upon these rules.[19] Now there are several authorisations to submit a claim to protect public interest and they cover many fields of law, so it is inadvisable to give a uniform definition of public enforcement. Some public enforcement actions initiated by the prosecutor, others by administrative bodies,

[15] Bencsik 2014, 654.
[16] Gelencsér Dániel: Közérdekű igényérvényesítés Magyarországon I. – a gyakorlat tükrében, *Eljárásjogi Szemle*, 2016/3, 32.
[17] Gelencsér 2016 32.
[18] There are more Act in force also, but we mention those relevant for our topic: Act LIII of 1995 t on the General Rules of Environmental Protection (hereinafter: Kvt.), Act LIII of 1996 on the Protection of Nature
[19] Pp. 571. §.

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furthermore in some cases by associations too. Some of these actions are declaratory actions, others are creating legal relations, still others condemnatory upon legal authorisation. Because of this complexity we could not give a summarised procedural content description on the basis of which we could decide if an authorisation falls within the scope of definition or not. For this reason, it serves legal certainty better if the special act gives the authorisation to submit the claim also orders to apply the provisions of this chapter of the Code. [20]

We have to emphasize those persons' in the name of the action was brought will not be litigants.[21] At the same time, autonomy of the parties excludes to make a judicial binding decision against their will, which is why special acts granting the right to submit a claim states that public enforcement does not affect individuals' right to claim.[22] But the plaintiff shall to name the entitled persons in his claim and the way of proof they could justify they are members of the class so the provisions of judgement are applicable to them.[23] This practically means the definition of those circumstances upon which members of the class could be identified. The congeniality of entitled persons necessarily means the congeniality the right to be enforced and facts establishing this right.[24] If the way of proof class membership cannot be defined uniformly or according to the judge there is no way of proof, which could be applied uniformly, procedure shall be dismissed ex officio.[25] The plaintiff could be in a proof and statement of emergency in connection with justification, while only the defendant knows the relevant circumstances in some case. This proof of emergency shall be solved on the basis of general rules of the Code. Clearly, the judge is not bound by the statements of claim, so the determination of both the entitled class and the way of proof could be part of the case, in which judge shall decide at the end, but only within the limits of the claim. [26]

In the procedure declaratory action is permitted if unified condemnation is not possible because the sum of condemnation is different per head, but the right to be declared is the same.[27] The legitimacy of this special declaratory claim is that it is not possible to judge the sum of condemnation within one evidentiary process for every member of the class, so it could be condemned after start an individual action. [28]

[20] Arguing to the Act CXXX of 2016 571-572. § and Wallacher Lajos: A kollektív igényérvényesítéssel kapcsolatos perek, in: Wopera Zsuzsa (edit.): *Magyarázat a polgári perrendtartásról szóló 2016. évi CXXX. törvényhez*, Wolters-Kluwer, Budapest, 2017, in: https://uj.jogtar.hu/#doc/db/384/id/A17Y1559.KK/ts/20161202/ (10.10.2016)
[21] Pp. 573. § (2).
[22] Wallacher 2017.
[23] Pp. 574. § (1).
[24] Wallacher 2017.
[25] Pp. 575. §.
[26] Arguing to Pp. 574. §.
[27] Pp. 574. § (3).
[28] Wallacher 2017.

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The Code was created two different types of dismissing procedure, to which refusal of the claim is not related, because same congeniality is not a precondition of the action (while there are cases of public enforcement which do not even have a real class behind), rather it is to be a subject to debate and evidence procedure. However, in this case the claim incorporated in a public enforcement claim would be impractical and unsuccessful, not the claim is ungrounded, so it should not be dismissed in a judgement. There is a place for dismissal of the proceeding when the preconditions wrote in the general part of the Code are not satisfied after amending the statement. A special type of amendment is to convert condemnatory claim to declaratory claim.

This is also true to the way of justification of the membership, which is kind of an evidential question and has two cases of successfulness: when the way of proof marked by the plaintiff is unsuccessful in one hand, and when this way is effective but it cannot be applied uniform to all the members of the entitled class on the other. The requirement of uniformity has not violated if the plaintiff marks not only one way of proof or justification, but two or more, and each one is applicable for a subcategory of the class. In other words, the way of justification shall be categorical but it could contain some kind of differences in point of the members of the class if the main conditions expected by law of public enforcement are stand: essential congeniality of facts and legal argument. [29]

In the judgement of a public enforcement we also shall define the entitled class and the way of justification. [30] The losing defendant shall be judged to make payment to the entitled members of the group, but court costs are judged to the plaintiff. [31] For the avoidance of confusion the Code regularizes the personal scope of the judgement.[32] As we mentioned before, after the public enforcement procedure members of the class have the opportunity to submit an individual claim, but in this case individual plaintiff shall enclose a simple statement to his claim. So the Code take out from its scope only those class members who have declared that kind of wills,[33] thereto they have to be notified about the judgement. This shall be accomplished by the defendant, since he knows the members of the group on one hand, and on the other hand it is in his favour to know if there would be individual claims against him or not. Class members answer the defendant if they would maintain the right to sue within the regular statute of limitation or not. In the case the entitled class member did not get the notification and bring an individual claim the defendant would call the entitled person to make the statement within this case who either carries on the case, or accepts the judgement of the public enforcement case and abandons the action or the court would dismiss proceeding. The Code clearly declares that the judgement of public enforcement has binding force in relation to the defendant, is that he cannot bring individual claims against the entitled class members to prevent the completion of the judgement.[34]

[29] Arguing to Pp. 575. §
[30] Pp. 577. § (1)
[31] Pp. 577. § (1)-(2)
[32] Pp. 578. §.
[33] I.e. opt-out model.
[34] Wallacher 2017.

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But on the other hand the Code does not settle the situation when the claim of the plaintiff is dismissed by the regional court. Probably aspects of procedural economy won't prevail in these cases, because entitled members are not interested in joining this kind of judgement, so mass of individual claims are expected in this case.

3.2. Collective litigation

Introduction of collective litigation into the Hungarian legal system beside public enforcement is reasonable because the Code does not allow public enforcement for any kind of cases. While in the case of public enforcement action is started without the approval of real entitled persons by substantive law (which as we mentioned before could be legitimated by a significant social or public interest), thus collective litigation accomplishes the objective of procedural economy by the full respect of party autonomy. [35]

The Chapter on collective litigation contains only the necessary ruling differ from the general rules, because in many cases application of general rules of the Code is appropriate in this type of actions, e.g. jurisdiction of court, litigated amount, etc. But the Code obligates legal representation, which is justifiable procedures conducted by district courts. [36]

According to the Code collective litigation is a kind of collective redress in which the decision and explicit declaration of entitled persons forms the basis for claims could be judged together in one action, so it realizes opt-in system. The right of at least ten plaintiffs[37] which are the same in content could be vindicated within the form of collective litigation. This common right of the plaintiffs called representative right. We could talk about collective litigation if the facts, so called representative facts, establishing representative right are common in connection with all the plaintiffs and the court has approved the form of collective litigation. Another condition that only in the cases taxated by the Code could the plaintiffs decide to claim their right in the form of collective litigation: namely claims arising from consumer contract, labour actions and claims for health damages and property damages directly caused by unpredictable environmental load based on human activity or omission. [38] It is clear out of the explanation of the Code that probably in these cases individual claims won't be submitted to the court so without the advantages of collective redress legal protection would come to nothing that is why these types of action are nominated is the new Code. [39]

[35] Arguing to the Act CXXX of 2016 582. §
[36] Arguing to the Act CXXX of 2016 582. §
[37] There is no maximum numer of plaintiffs, but in the case of unmanageably large number of plaintiffs could be result in the dissmiss of claim.
[38] Pp. 583. § (2)
[39] Arguing to the Act CXXX of 2016 585. §

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Plaintiffs shall declare their intent to apply the rules of collective litigation even in their claim, and they shall name the collective plaintiffs, the base of their partnership, the person of (vice)representative plaintiff, the authorisation given to the legal representative, the representative right, the representative facts, the determination of way of justification of every plaintiff is a kind of person representative facts and rights are stand for, and the collective litigation contract of the plaintiffs. [40] In the case of a condemnatory action claims of the plaintiffs shall be defined per capita.

If the legal conditions of collective litigation are not prevailing anymore court shall dismiss the application for authorisation, in other cases authorisation shall be permitted. This decision could be make within maximum of sixty days from the submission of the claim but at least together with closing of preparatory stage. In the ruling permitting collective litigation shall define the representative right in question, the representative facts and the way of justification of causation and its deadline. In the case of refusal of authorisation, action shall be dismissed at the same time. The extension of legal effect upon lodging a claim exists in relation to those plaintiffs who submit their claim within 30 days from the ruling come into force individually or according to the rules of collective litigation, or validate their claims by other means. [41]

In collective litigation the rights of plaintiffs shall be exercised by the representative plaintiff alone. Any kind of limitation of these rights of the representative plaintiff by the collective litigation contract does not have an effect on validity and scope of statements, legal actions of the representative plaintiff. The procedural rights of plaintiffs are uniform and could be practiced uniformly. [42]

The collective litigation contract incorporates the will of plaintiffs not entitled to act in the procedure. This contract contains how should be the procedure conducted, how the rights and obligations shall be exercised and procedural provisions in the sense that it establishes the background of procedural rights and obligations exercised by the representative plaintiff. So it is not incompatible to draft contractual rules in a procedural act.[43] The contract shall be put in writing, and the Code regulates the questions parties have to regulate the contract to be operable and fair. [44]

Only in the preparatory stage may new plaintiffs enter into the collective litigation or leave it with the approval of the court. Only the representative plaintiff could apply for these kind of actions on one occasion aggregated.[45] It is useful to allow post-joinder since it is possible that organisation of the class is not terminated at the time the claim was submitted. On the other hand, the identity and rights of class members effect on representative rights and facts which determination is the first step of preparation of the case so it cannot be allowed without any limitation of time.

[40] Pp. 584. § (1) bek.
[41] Pp. 585. §.
[42] Pp. 589. §.
[43] Arguing to the Act CXXX of 2016 586. §
[44] Pp. 586. §.
[45] Pp. 587. §.

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But this is not violating the autonomy of possible plaintiffs since they still have the opportunity to submit an individual claim, they lose only the opportunity to sue within a collective form. Implicitly it is necessary to amend collective litigation contract appropriate. We have to notice that permitting joinder or leaving is not mandatory to allow in the contract.[46]

Court judges the claim unified upon the patterned fact based on the representative facts and rights. The defendant is condemned in favour of those plaintiffs for whom the justification of conjugation was made in time. Representative plaintiff shall be condemned to pay or entitled to get court costs. [47]

Both within the rules of public enforcement and collective litigation if upon the complexity of the case it is reasonable three professional judges may proceed in these cases.[48] But in the case of collective litigation only if the case regional court acts in the first instance.[49]

We shall mention the expert suggestion proposed a different ruling to the system of collective redress. According to the suggestion the chapter of collective redress would contain three types of actions. The first one is actio popularis which would keep the rules of the Act III. of 1952. The second one is collective litigation as the archetype of collective redress as an opt-in model without any restriction of subject matter, but mainly applied in cases where individuals enforce their specified claim of damages within one procedure. The cases should have the same legal ground, but in the sense of amount they could proceed as individual claims. And thirdly the class action as an opt-out model applied only in a narrow area of substantive law to reduce the number of abuses. Common facts and legal base and a minimum number of class members are provided. The class should be treated as a unit till the end of execution. The defendant should pay a sum of money to the class, which would be divided upon an allocation plan made by the representative or a civil association. [50]

4. The applicability of collective redress in environmental matters

János Sári said speciality of protection of the environment consists in humanity and environment could be its object. [51]

In the terminology of the Act LIII of 1995 on the General Rules of Environmental Protection (hereinafter called Kvt.) environmental impact means the direct or indirect emission of a substance or energy into the environment.[52] According to the act in force in the event the environment is being endangered, damaged or polluted, environmental protection associations are entitled to file a lawsuit against the user of the environment requesting the court to enjoin the party posing the hazard to

[46] Arguing to Pp. 587-589. §
[47] Pp. 590. §.
[48] Pp. 573. § (1) and 282. § (1)
[49] Pp. 582. § (1)
[50] See Harsági 2015., 232-236.
[51] Sári János – Somody Bernadette: *Alapjogok, Alkotmánytan II*, Osiris, Budapest, 2008, 179.
[52] Kvt. 4. § 6.

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refrain from the unlawful conduct or compel the same to take the necessary measures for preventing the damage.[53] Furthermore, in the event of endangerment of environment, the prosecutor is also entitled to file a lawsuit to impose a ban on the activity or to elicit compensation for the damage caused by the activity endangering the environment. [54] That will also be the situation after 1st of January, 2018, so public enforcement claims could be submitted by the environmental protection association and by the prosecutor due to Kvt. Kvt. defines the prosecutor's right to submit the claim narrower in the cases described in section 101, the scope of legal consequences applicable upon an offending activity. Polluters of the environment shall bear liability for the impact of their activities upon the environment in the manner governed in this Act and in other legal provisions. He shall refrain from engaging in any activity posing imminent threat or causing damage to the environment, where environmental damage has occurred, to restore damaged natural resources and to take measures to restore the baseline condition. In the event of failure to comply with the requirements set out in Paragraphs a) the court shall limit the activity, or shall suspend or prohibit this activity. From the comparison of cited legal provisions comes that judge can make a decision implied in section 101 of Kvt. on the ground of claim submitted by the prosecutor to ban on activity, namely prohibit the activity causing damage to the environment. This institution is similar to the regulation of section 341 (now 6:523) of the Civil Code, which makes it possible to apply a sanction regulated by law and is applied exceptionally in the case of a has not occurred but really threatening potential damage. It comes from the provision of law if the risk was elapsed from the nature of this legal relationship the above mentioned prohibition of threatening activity loses its legal basis. In the absence of legal basis according to the second sentence of section 123 of Code of civil procedure in force there is no place of declaratory claims and judgements. We have to evaluate different the prosecutor's declaratory claim in the case of claims for restoring damages occurred by endangering environment. In the cited case the plaintiff successfully referred that the prosecutors right to submit a declaratory claim expands to the condemnation upon the same legal relationship if the additional requirements of the code of civil procedure are applicable. In this case it is also required that claim for damages between the polluter and the prosecutor entitled to submit a claim shall be existing.[55] In the cited case the prosecutor claims for prohibition the activity causing damage, instead of compensation, so Curia upheld the dismissal. Natural persons are not entitled to submit a claim, as Curia stated in its judgement. [56]

In accordance with collective litigation the bill contained only the first and second cases, and it has been expanded to environmental cases upon the initiation of the Deputy Commissioner Protecting the Interest of Future Generations of Commissioner for Fundamental Rights during the parliamentary debate.

[53] Kvt. 98-99. §, Gyimesi Tamás Ferenc: A res iudicata a kollektív igényérvényesítés tekintetében, *Iustum Aequum Salutare*, 2015/2, 180.
[54] Kvt. 109. §.
[55] EBH 2000. 321.
[56] BH 2007. 259., and EBH 2006. 1418.

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His reasons were the following: cost effectiveness is evincible in this types of actions, while there is a possibility of individual actions, but due to unequal distribution of costs it is not started mostly. Only those kind of actions could be included where it is typical that there is common legal and factual basis which justify the possibility of interconnection because of the characteristic of substantive claims. The scope of this kind of claims is hardly limited: is could be traced back to an environmental load causes health deterioration or property damage to the group of plaintiffs, injured parties could not have foreseen it, i.e. they are outside normal operation, and are consequences of human activity or omission.[57] In practical, disaster like, unforeseen, unlawful environmental load claims could be enforced in collective claims.

The Code however directly does not apply the definition of environmental load as right to collective litigation, but the damages resulting from environmental load. The sum of damage or restitution could be different per head, which indicates some kind of individualisation, e.g. determining the degree of health damage by expert examination. But this should be happen after judging the legal base. In addition, after the condemnation of responsibility amicable settlement comes into the view of the parties. Under Kvt. the user of environment shall bear liability for the impact of his activity or omission upon environment according to criminal and civil law, and administrative provisions.

Under Kvt. damage caused to other parties by virtue of activities or negligence entailing the utilization 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.

5. Summary

In conclusion, also pointing out the importance of this theme, we would like to give some thoughts about the EU aspects of this question. As we have mentioned in the introduction, the right to healthy environment is considered as fundamental right, so it is not surprising it is protected by international conventions and EU law. For our topic the Aarhus convention[58] has an enthusiastic importance, and one of its key-questions is the wide providing of access to justice for the public in environmental cases. While the damage to environment has a speciality that while the individual damages are low, the cost and risk of litigation are high, so the Convention concluded by the EC in 2005, protects primarily not the rights of individuals but the public interest. The right of access to justice is realised mainly and effectively though submitting a case by organisations authorised by national laws, even when the deraign of final decision in a collective redress serves primarily not the rights of individuals but the public interest.[59]

[57] Wallacher 2017.
[58] Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, was adopted on 25 June 1998.
[59] Mariolina 2014, 257-266.

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Besides in many states, e. g. in Hungary, prosecutor is also entitled to submit a case. We may be worth emphasizing, that private individuals are not entitled for the initiation of these proceedings, because in such cases they are likely to be unable to effectively enforce their interests by considering the risk and expected profits. From this approach we could felt to be applicable basically the rules of public enforcement, but in my opinion the frame of collective litigation is also comply with the Convention, if we could consider the joinder plaintiffs as authorised by law to submit a case, or even easier if environmental association would named as representative plaintiff.

We can see that the rules of new Code of Civil Procedure on collective redress together with the authorisation given by the Kvt. are applicable to validate damages caused to the environment in a European manner.

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