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Environmental liability insurance, as assurance of reimbursement for environmental damages

Introduction

The most important social problems of the XX. and XXI. centuries were came up about the environmental protection. This social sensibility mostly turns up with questions of responsibility for using of environment. The gradual increasing of industrial development has been affected in recourse of environment, and in parallel with this has been raised the pollution of environment. These are threatening the values of environment, which effect are suffering the society.[1] In spite of the fact that industrial production has been adapted and upgraded to the achievements of science in many cases, they have harmful effects on society and the environment.[2] Among other things this is why these negative effects evolved tendency in legislative process to protect the humanity against injurious effects of environment.[3] The environmental catastrophies were urged the legislation to regulate too, but frequently without avail. The conscious protection of environment was evolved much time before regulating, and ruling of the protection of environment was only started – state by state variant – in XX. century.[4] The ruling of protection of environment basically was begun from national level, and during time since it is a global problem transformed to a dominant object of supranational ruling.[5] The rules of the international law,[6] the primary[7] and

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[1] Julesz Máté: *A környezetvédelem polgári jogi vonatkozásai*, PhD értekezés, Pécsi Tudományegyetem, 2007, 24.

[2] Tarr György: A környezeti károk meghatározásának szakértői módszertana*, Magyar jog*, 1999/7, 410.

[3] Kilényi Géza: A környezetvédelem átfogó jogi szabályozásának alapkérdései, *Jogtudományi Közlöny*, 1974/7, 353.

[4] Julesz 2007, 25.

[5] Prugberger Tamás: A globalizáció és a környezetvédelem neuralgikus kérdései a jogalkotás, a jogkövetés és a jogalkalmazás síkján*, Jogelméleti Szemle,* 2001/1, in: http://jesz.ajk.elte.hu/prugberger5.html (03.07.2017)

[6] The Topic of many international contract is environmental protection or some part of it, so without aiming to make an exhaustive list, for example Stockholm Convention in 1972, Geneva Convention in 1979, constitution of `Bruntland Commission´ (WCED – World Commission on Environment and Development) in 1984, Helsinki Covention and Rio de Janeiro Convention in 1992, Kyoto Protocol in 1997, Johannesburg Declaration in 2002, and the most important convention of the conference in 2015, which names Paris Climate Change Conference, where the Contracting States assumed a voluntary commitment for lessening the aggravating change of climate.

[7] See the Preamble of Consolidated version of Treaty on European Union and the Treaty on the Functioning of the European Union, Article 3 (3), Article 21 (2) points f) and d), and the Title

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secondary law of the European Union, principally directives of the European Union,[8] and in regard to this the national rules attribute accentuated significance for conscious use and lesser risky strain of environment. Despite the fact that, the modernization of rules started during the transition in the end of the XX. century at the international level,[9] the cooperation of states slowed down, because the states prefers own interests than the collective action for viable environment.[10]

Taking as a basis of the national rules the starting-point is regarding and guaranteeing the right to healthy environment such a human right in Constitution of Hungary, furthermore regarding of the sustainable development at highest level of the legislation,[11] finally the rules of the Hungarian Constitution about commitment of reimbursement of environmental damages,[12] which is declaration of polluter-pays principle, but these rules needs supplementary and specify regulations. Alongside that we cannot forget the most important rules in Hungary, which are – so without aiming to give an exhaustive list – the Act LIII of 1995 on General Rules of Protection of Environmental (hereafter: Environmental Protection Act), the Act LIII of 1996 on Protection of Nature, furthermore other acts (for example Act LVII of 1995 on water management etc.) and regulations of government.

The regulations of protection of environmental and responsibility for environmental damages has interdisciplinary nature,[13] in which we can separate the rules of public law (mostly the law of public administration, but we cannot neglect rules of criminal law) and rules of private law (mostly rules of civil law), so *„we cannot destroy the environment without retribution,"* we must respect `rights of environment´.[14]

XX. and Article 191. All of these articles are determining the requirements of forming the internal market reckon with rules of the environmental protection, which mostly means annunciation of the sustainable development.

[8] One of the most important directive of the European Union is Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage which defines the environmental damage, and the aim of the directive is laying down the rules based on the polluter-pays principle. The all-time Presidencies of the European Union shall pay particular attention to protection of environment.

[9] The major United Nations event, conference on the environmental protection was the United Nations Conference on Environment and Development (UNCED), also known as the Rio de Janeiro Earth Summit, Rio Summit etc. held in Rio de Janeiro from 3 to 14 June 1992. The biggest proceed of Earth Conference was the proclamation principles of sustainable development.

[10] Csapó Orsolya: *A környezeti felelősség határai. A közösségi jog hatása a magyar szabályozásra az irányelvek tükrében,* PhD értekezés, PPKE, Piliscsaba, 2015., 15-16., in: https://jak.ppke.hu/uploads/articles/12332/file/Csapo_dolgozatkut..pdf. (03.07.2017)

[11] Csák Csilla: *A környezetjogi felelősség magánjogi dogmatikája,* Miskolc, 2012, 149-160.; Julesz 2007, 30.

[12] Constitution of Hungary, Article XXI.

[13] Csák 2012, 19.

[14] Sopovné Bachmann Katalin: A környezetvédelmi igények büntetőjogi és polgári jogi érvényesítésének egyes kérdései bírói szemmel, in: http://www.kvvm.hu/szakmai/karmentes/egyeb/kjogalk/09.htm (02.05.2017)

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Goal of this paper is demonstrate polemical questions of responsibility for unlawful using of the environment, mostly the payment obligation for environmental damages, and rules of the legal instrument regulated by civil law, namely the rules of liability insurance policies, according to which the insurer undertakes to provide coverage for the risk of environmental damages. On the basis of prognoses is important to analyse the significance of this insurance product in market-economy of Hungary.

1. Nature of responsibility in environmental law

Elemental function of rules in protection of environmental is not retribution, but the goal of this is prevent of damages in environment, decrease it to the minimum and if they had occurred that handle them.[15] Operator of environment responsible for the effects of his activity on the environment.[16] In the literature of law is not consensus in determination of principle of responsibility. There is view which says that the operator of environment shall be liable for all his activity which effect on environment.[17] Another view says that the responsibility in environmental law needs a narrower interpretation.[18] In view of regulation of responsibility we can separate direct and indirect rules. Between the rules of certain Acts we have to face with indirect rules most often. These contain provisions according to conscious usage of environment, which were minimize the risk of occurring of environmental damages. Conversely, the direct rules contain provisions according to responsibility in environmental law.[19] The direct rules of responsibility in environmental law may be approached from various aspects, these are criminal law, administrative law and civil law.

The most restrictive rules of responsibility in environmental law is determined by the Criminal Act,[20] which are in accordance with rules of Directive 2008/99/EC – protecting the environment by means of criminal law.[21] These rules may be used as a last resort of liability – it also follows from the primary principle of criminal law, which is ultima ratio principle[22] – only in case, if the level of risk posed to society is so large, that the more lenient punishment not enough to repair the damage in environment and it's necessary to apply the rules of criminal law.

Primary rules of sanctions of responsibility in environmental law stay in administrative law and in civil law. The liability in administrative law arises in case of negligence some rules of administrative law, or the compulsory administrative decision, which actions establishes the administrative illegality.

[15] Csapó 2015, 35.
[16] Environmental Protection Act 101. § (1)
[17] Csák Csilla: Gondolatok a szennyező fizet elvének alkalmazási problémáiról, *Miskolci Jogi Szemle*, 2011/Különszám, 39.
[18] Csapó 2015, 34.
[19] Csapó 2015, 37.
[20] cf. The criminal offences in Act C of 2012 on the Criminal Code Chapter XXIII.
[21] Görgényi Ilona: A környezet és a természet elleni bűncselekmények, in: Horváth Tibor és Lévay Miklós (edit.): *Magyar Büntetőjog Különös Rész*, Budapest, Wolters Kluwer Kft., 2013, 281.
[22] Görgényi 2013, 282.

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The consequence of these actions is the administrative sanction, which may be several. Among the administrative sanctions we can distinguish compulsory, restrictive and prohibitive sanctions, which are showing dual image. On the one hand it is appearing in rules about commitment of operator of environment, which is not necessarily require negligence action, but in case of violation of law can be used as a sanction. Other form of the administrative sanction is administrative penalty, which can be used only in case of violation of law.[23] This sanction always means payment, which can be used most frequently in case, if the infringer profits from the violation. The primary function of administrative sanctions are repression and individual prevention, but must not be neglected the general prevention too.[24] The administrative responsibility is based on objective liability in Environmental Protection Act, and in case of violation the exculpation is on a small scale.[25] In that case, when the infringer relieved of this liability, the commitments of elimination and reduce of damages are subsisting.[26] In analysing this issue the importance of the exculpation is manifesting in defrayal for costs incurred during fulfilment of commitments, and imposed penalties and other sanctions by liability.

The Environmental Protection Act creates obligation jointly and severally for all-time owner and holder of the tenement, in which was proceeded the action which caused negative environmental impact or caused risk for pose negative impact, but only in time of these actions.[27] The owner shall be exempted from obligation jointly and severally in case, if he identify operator of environment and prove, that he is not liable for damages.[28] According to the Environmental Protection Act in this case the operator is liable for damages solely. If the operator has not enough wealth, that the central government budgetary advances the costs, but ultimately the operator must obligate the commitments.[29] We need to ask questions, which will be answered later. First, which are the costs (or all costs are it), which shall be reimbursed by the third person in virtue of relative obligation? The second question is that, which are the legal possibilities and financial security instruments for operator to devolution of reimbursement risk?

[23] Csapó 2015, 199.

[24] Christián László: A közigazgatási büntetőszankciók rendszere, in: https://jak.ppke.hu/uploads/articles/14204/file/A%20k%C3%B6zig.b%C3%BCntet%C5%91szanci%C3%B3k%20rendszere.pdf (03.01.2017)

[25] The user of environment shall be relieved of administrative liability if able to prove that the threaten or violation of environment were

a) caused by event of armed conflict, war, civil war, armed rebellion or natural disaster;

b) caused by execution of Authority's decision or Court ruling.

[26] Environmental Protection Act 102/A. § (7)

[27] Environmental Protection Act 102. § (1)

[28] Environmental Protection Act 102. § (2)

[29] Environmental Protection Act 102/B. § (1)-(5)

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2. Aspects of environmental liability in civil law

To the extent of the infringement activities consumption and usage of environment cause high risk of maintaining the original estate of environment.[30] In this context the damages in environment arises very often, which can cause considerable material or non-material[31] damages.[32] The first Paragraph of 103. § in Environmental Protection Act lays down rules of environmental liability, which applies the suggestive rule on the rules of (6:535. §) in Act V of 2013 on Civil Code. The second paragraph of liability for highly dangerous activities [6:535 § (2)] makes clear the ruling, pursuant to which *„These provisions on liability for hazardous operations shall also apply to persons who cause damage to other persons through activities that endanger the human environment."* Interpretation of this rule is clear, the application of rules of liability for highly dangerous activities is not by the reason of behoove of the highly dangerous activity. The highly dangerous on the environment of its own is establishing the application,[33] which was established by the Court of Capital City in case named `red sludge catastrophe.´[34] The first paragraph of 102. § in Environmental Protection Act creates obligation jointly and severally for all-time owner and holder of the tenement, in which was proceeded the action which caused negative environmental impact or caused risk for pose negative impact in time of these actions. This norm is not the direct rule of liability, but it is only obligation to fulfil commitment of factual liable person. So the owner of tenement is liable even if he don't do the dangerous activity on the environment.[35] The owner shall be exempted from obligation jointly and severally in case, if he identify user of environment and prove, that he is not liable for damages.[36] This situation arises more often, and in practice we know several judgement of courts, in which were established the jointly and severally liability of owner and user of tenement. The Act entails to owner very difficult burden of proof with commitment of proving the exclusivity of using the tenement, and proving the causality of responsibility.[37]

[30] Csák 2012, 183.
[31] I don't dealing with non-material damages in this paper, but it can be a topic for another paper. The new legal instrument of Act V of 2013 in Civil Code is restitution, which eliminates errors in practice of the old non-pecuniary damages. The restitution can be the effective solution for the non-material damages caused with damages in environment.
[32] Tarr 1999, 410.
[33] Fuglinszky Ádám: *Kártérítési jog,* HVG-Orac Lap- és Könyvkiadó Kft., Budapest, 2015, 363.
[34] ÍH 2013.66.
[35] Csák 2012*,* 56.
[36] Environmental Protection Act 102. § (2)
[37] Csák 2012, 57.

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3. Assurances of conversion for environmental damages

Execution of penalties taxed for tortfeasor because of environmental damages often faces of obstacles. Assets of the tortfeasor often is not enough to cover imposed administrative penalties or the amounts of the compensations.[38] In the cases, when the penalties were taxed for firms which are unknown (phantom firms) or were dissolute without succession (dissolution by winding-up), the state shall be liable for costs of measures taken to restore the environment, which is significant burden for state budget.[39] To solve this difficult situation the legislation of European Union established the Directive 2004/35/EC on environmental liability with regard to the prevention and redressing of environmental damage, in which makes binding for Member States to create measures for national legislation to make rules, which motivates firms – which activities are dangerous on environment – to have adequate insurance or other financial assurance for cover of costs and penalties. Furthermore, state needs to motivate of the market of financial assurances for make measures to create the adequate financial product and assurances.[40] None the less, the rules of financial assurances were established more or less, the available statistical informations are deposing that, the firms invest less money a year by year to integrate[41] or direct[42] innovations for protection of environmental. The existing data's of General Statistics Office of Hungary shows, that the operators of national economy was spent 127 billion Hungarian forint for measures to protect environment, or avoid, prevent, but leastwise minimize the environmental damages in 2013, what is 10% less than total invest of previous year.[43] The total invest was more than 200 billion Hungarian forint in year of creation the Directives of European Union (in 2005), in compare that, during 10 years this index decreased by 38%.[44]

[38] Sanctions determined by rules of certain branches of law can tax separately or collectively too.

[39] Csák 2012, 185.

[40] Csák 2012, 186.

[41] The integrated investments are innovations, which change the technology of the production process. These are process integrated to manufacturing, which help to prevent the pollution of environment.

[42] The direct investments are innovations, which are not or less changing the production process. Primary goals of the direct investments are mitigating, disclaiming and monitoring of contaminations.

[43] Data's of General Statistics Office of Hungary from journey `Statisztikai Tükör´, in 15th December 2014, in: http://www.ksh.hu/docs/hun/xftp/idoszaki/kornyraford/kornyraford13.pdf. (01.07.2017)

[44] Data's of General Statistics Office of Hungary from journey `Statisztikai Tükör´, in 23th February 2010, in: http://www.ksh.hu/docs/hun/xftp/stattukor/kornykorkep08.pdf. (01.07.2017)

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The direct invests from the total invests are 89%, and the integrated invests are 11% from the total, which change the production process and are more environment-friendly.[45] We can see from this datas that the firms don't make innovative measures, don't apply integrated processes, which can change his production process, don't try for minimize the threaten of environment, but they try to release and prevent the damages in environment, which are more adverse than don't take a risk with pollutants and harmful effects. Despite that, the numbers of firms, which have adequate financial assurances to finance the costs of repairing the environment are very little. The reason for this is may that the firms don't recognise risk of occurring the damages, or they recognise, but the directions of firms don't have effective risk management and they don't separate financial funds to eliminate damages.

Regarding to investments can be mentioned, at the legislation level were determined rules for inspire the investments,[46] in field of reduced levels of taxation.[47] I think, this is the opportunity for firms, which should boost innovations. Despite that, based on the above statistical information can concluded that the numbers of investments to protect the environment are decreasing in Hungary, but the global data's of the European Union are not encouraging.[48]

In pursuance of the fifth paragraph of 101. § in Environmental Protection Act *„For certain activities the person burdening the environment is required to provide financial security, and in certain cases to conclude appropriate environmental liability insurance."* Certain activities, form and sum of the financial securities, application of them and registry of the financial securities may be determined by special Government Decision.[49] The Hungarian Government make a Proposal[50] for Decision (hereafter: Proposal) in 2007, but the Decision has not accepted yet. In pursuance of the Proposal the requirement of a security shall burden legal person (or any person without legal personality) and natural person i) whose activities are burdening the environment or whose are operating an institution burdening the environment, ii) whose are operating with waste management, or iii) whose are obligated to remediation activities in case significant amount of environmental degradation.[51]

[45] Datas of General Statistics Office of Hungary from journey `Statisztikai Tükör´, in 15th December 2014, in: http://www.ksh.hu/docs/hun/xftp/idoszaki/kornyraford/kornyraford13.pdf. (01.07.2017)

[46] cf. Act LXXXI of 1996 on corporation tax and taxation of dividents 28. point of 4. §, and d) point of first paragraph of 22/B. §

[47] Erdős Éva: A beruházás ösztönzés és a környezetvédelem, in: Raisz Anikó (edit.): *A nemzetközi környezetjog aktuális kihívásai,* Miskolc, Miskolci Egyetem, 2012, 48.

[48] Cf. European Comission (DG Enviroment) Service contract for assessing the potencial emission reduction delivered by BAT conclusions adopted under the directive on industrial emissions, in: https://circabc.europa.eu/sd/a/44aaf4c4-d716-4f02-91ab-a526b07ee6b7/Final%20report_20150501.pdf (26.04.2017)

[49] Environmental Protection Act 101. § (6)

[50] Proposal no. KvVM/KJKF/760/2007. of the Ministry of Environmental Protection and Water Management for Decision of Government on financial securities to protection of environment.

[51] Proposal 1. §

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The categories of financial assurances for prevention and remediation costs of environmental damages are wider in civil law, than insurance contracts. In pursuance of the Proposal environmental financial assurance can be the guarantee contract by a credit institution, contract of suretyship or financial assets, funds separated by operators at credit institution.[52] Choosing of any financial assurances by the operators, it will have other pecuniary aspects and more costs, because maintenance of financial assurances generate new very high taxes and costs. Reimbursement of these taxes and costs in whole or in part to consumers via tariffs, because these taxes and costs are often factored into prices of services.[53]

Among relevant insurance policies we can distinguish between environmental liability insurance (hereafter: ELI) and protection and indemnity insurance (hereafter: EPI). Both of these insurances are characterized by the fact that in the position of insured person[54] are legal persons whose activities are using the environment higher rage from the average,[55] which is not the same – it is more broadly – that the impression of the environment.[56] The fundamental difference between this two insurance is the obligation to the contract. For firms with activities defined by law[57] is mandatory to contract for coverage of EPI,[58] while contract to ELI is absolutely volunteer. The fundamental oversimplified mechanism of insurance is collection of predetermined risks (risk pool) and diversifier them.[59] The risks are diverse, which are based on uncertainty.[60] On these basis, we met with the same problem in both of the insurances. Define of the mathematical factors to assume of risks is very difficult for insurers, because of the high level of uncertainty of risks.

[52] a)-c) points in first paragraph of 5. § in Proposal.
[53] Csák 2012, 188.
[54] The position of insured person can divide in practice and in theory too. One part is the person who is effectively contracting with insurer, and the second position is the person on whose behalf is contracting the person. For ease of comprehension, in this paper I use the notion of `insured person´ collectively to this two different position.
[55] 9th point of the 4. § in Environmental Protection Act the usage of the environment is: impression of the environment or any environmental compartment and activity which is burdening the environment.
[56] 4th point of the 4. § in Environmental Protection Act the impression of the environment is: making any change in environment, or using the environment or any environmental compartment for natural resource.
[57] The 4th point of the 110 (7) of Environmental Protection Act authorise the Hungarian Government to define activities, which behoove is depend on EPI.
[58] Mandatory to contract EPI is prescribed for example by Act CLXXXV of 2012 on Waste for firms with activity of waste management, and by Act CXVI of 1996 on Mining for firms with activity of mining.
[59] Szalai Ákos: Prevenció és reparáció a kártérítési jogban – a kártérítési jog és alternatívái a két cél szolgálatában, *Állam- és Jogtudomány*, 2014/3, 41.
[60] Barnóczki Péter: A kockázatvállalás korlátozása a hazai jogi szabályozásban, in: http://jesz.ajk.elte.hu/barnoczki51.pdf (04.05.2017)

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We cannot regularly define activities which pollutes the environment, in parallel we cannot regularly define the damages, which can reveal with burdening of the environment too, furthermore from the same activities can arise diverse damage. That is why insurers must calculate with higher mathematical factors of risk.

As has already been mentioned, the environmental liability is not regulated only by civil law. Penalties for environmental damages cannot tax exclusively by rules of civil law, but taxing of penalties by the rules of other law (eminently by the rules of administrative law) is conceivable. In regard to this, providing coverage for damages, costs, penalties and other sanctions by insurers is possible. This is because rules of the insurance policies are dispositive, and insurer is not paying compensation instead of insured person, but insurance companies are providing coverage. It means, signatories to a treaty, particularly the insurer can determine freely events of insurance and also categories of damages. So it is conceivable to provide coverage for administrative penalties, furthermore for penalties taxed by rules of criminal law. Nevertheless, insurers are excepting in practice the other sanctions under coverage of insurance policies, but we can find examples of reverse too.[61]

3.1. Protection and indemnity insurance (P&I Insurance)

The P&I insurance is unfamiliar form of insurances, which has not big pressure on the insurance market. Firms, which are obligated to contract this form of insurance, have very risky activities, which can cause huge damages in the environment. The form of potential damages is diversified, so predetermination of them is not possible.[62] The riskiness of this activities is high and widespread, that's why is not possible to insure them fully, and determine rules which can satisfy all directives of insurers and insured persons and of course criteria and principles of environmental protection. This is demonstrated by the fact that, the Act or Decree of Government about mandatory P&I insurance has not been established by the legislature yet. The exhaustive list of highly dangerous activities on environment is in the Annex no. 1 to the Proposal. These activities are partitioned to the one-to-five scale and there is established the hazard classes and multiplier number of these activities too. The multiplier number establishes the extent and sum of assurances, like a risk factor. Despite that the Proposal was not accepted, the insurers can use it as a guideline to configure their business strategy, to assess the risks, to organize the risk pools, to constitute their provisions and establish the insurance premium.

[61] https://www.allianz.hu/hu/uzleti-ugyfelek/kornyezetszennyezesi-felelossegbiztositas.html/ (03.01.2017)

[62] Csák Csilla: A környezeti károk tipológiája*, Miskolci Jogi Szemle*, 2012/2, 17.

3.2. Environmental liability insurance policy (ELI policy)

For firms, which use substances dangerous on the environment is recommended to contract ELI to cover all costs of rehabilitation of the environment by insurance company. The 6:470. § on the Civil Act establishes the definition of liability insurance policy,[63] based on this the definition of the ELI is: the insured party (operator, user of the environment) shall be entitled, under an environmental liability insurance policy, to request the insurance company to exempt him, in the manner and up to the limit specified in the policy, from paying for damages, or paying restitution, for which he is legally liable. From the explanation of the definition is unequivocally comes that contraction of this form of insurance is not exclusively for economic operators, but it is open to the natural person. However, in practice is perceptible that, the insured people are firms, because of ELI policies are special between insurance policies of non-life insurance market. From the primary function of the liability insurance is perceptible that the aim of the liability insurance is protection of assets of insured person from decrease because of compensation. The coverage by insurer is better for the injured party too, because he can get the compensation earlier. In connection with burdening the environment frequently occurs damages, but the ELI is not dominant in non-life insurance market compared to other types of liability insurance policies.

Hereinafter, I will present the special rules of the environmental liability insurance policies used in practice, which are established by insurer companies.

First I need to define the substratum of insurance policy, which is the direct subject of risk maintain so-called insurable interest. The ELI policy cannot came off validly without insurable interest. The definite and clear position of jurisprudence is that the aim of the insurance is protection of the insurable interest of insured person. The insurable interest of the insured person in liability insurance policy is exemption of the insured person by insurer, from paying for damages and for restitution. The direct subject of the insurance is payment obligation until the occurring of the specified insured event, which is suspensive condition, and after that the direct subject changes to a giving service.[64] The insurable interest connected with ELI is exemption from paying compensation by insurer for damages caused by activities dangerous on the environment.[65] It is important to highlight that the insurance company's commitment to pay instead of insured person, if the insured person is legally liable for causes damages on the environment.[66]

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[63] 6:470. § on the Civil Act: The insured party shall be entitled, under a liability insurance policy, to request the insurance company to exempt him, in the manner and up to the limit specified in the policy, from paying for damages, or paying restitution, for which he is legally liable.

[64] Csákó Györgyi: *A károsult védelme a felelősségbiztosításban,* PhD értekezés, Miskolc, 2000, 45-46.

[65] Activities dangerous on the environment means activities by act or omission too, which cause damages on the environment.

[66] Damages on the environment or on the environmental compartments are direct or indirect damages occurred on environment or on either of the environmental compartments (water, ground or air), which is measurable and significant unfavourable change.

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Generally, the insurers establish three other conditions to provide coverage, namely I) the damage is unpredictable, II) and it is quick, sudden and misadventure, III) furthermore, it originates in event, which is diverse from normal process of activity (for example in case when an oil barrel suddenly capsizes at facility of insured person and the oil goes into a near river.). In regard to this, the insurance does not cover the damages, which are foreseeable.[67]

Important part of a liability insurance policy is laying down the scope of insurance coverage and insurance sum. The scope of insurance coverage establish the damages for which is insurer liable to pay in case of their causing, until the insurance sum establish the rate of payment. Definition of environmental damages is not established in the new Civil Code, and the international and other documents of the European Union mostly entrusts a national legislation to establish the definition.[68]
The scope of insurance coverage in examined ELI policies were fixed same, namely the coverage of ELI policies extend to all personal and material damages, and to restitution, in respect of which the insurer doesn't apply exclusion. The insurance sum represents the highest amount of settlement the insurance company is liable to pay for injured person of each insured event. Regard to that the rate and grounds of environmental damages are high volatile and unpredictable, paying full of insured sum is often not enough to cover all or part of the environmental damages.

During examination of questions of insurance sum need to point out its connection with function of liability insurance policy. The aim of liability insurance is protection of assets of insured person (who is the potential tortfeasor of damages in the environment) to rate of established insurance sum, so it means that the primary function of liability insurance is prevention. Regard to the potential injured person the other function of liability insurance policy is reparation.[69] Occurrence of the insured event indicates the liability of insurer to remedy the problems. If we compare the primary function of liability insurance policy with insurance sum and with potential occurred environmental damages, and we examine all of these in the light of the rules and goals of Environmental Protection Act[70] arises the problem, namely the preventive function of liability insurance policy efforts the knowingly behaviour of potential tortfeasor, which is in conflict with aims of Environmental Protection Act.

One of the most important rules of the liability insurance policies is to specify the insurance coverage, exclusions and restrictions. These are events with high risk, which are often specified as insurance event, or are excluded because of the high risk and unpredictability.[71] The most frequent specified exclusions in ELI policies are:

[67] Bárczay András – Csillag György: *A vállalkozási kockázat mérséklésének biztosítási és banktechnikai lehetőségei az építőiparban,* ÉGSZI, Budapest, 1988, 22.
[68] Csák 2012, 250.
[69] Reparation of assets of insured person (who is the tortfeasor) is in case, when he pays before paying of insurer. Furthermore, the insurer directly pays for injured person.
[70] The a) point of second paragraph of 2. § on the Environmental Protection Act: the primary function of protection of environment is to prevent the pollution and damage in environment.
[71] Csákó 2000, 87.

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(a) Damages, which occur in polluter materials. It is not justified to cover of damages in property of polluter, because it is in conflict with primary function of liability insurance. To cover these damages exist other insurance policy, which names general all-risk indemnity insurance policy

(b) Damages occurred slowly, continuous, not suddenly and foreseeable.

(c) Damages occurred by specified activities, like waste management or mining. It is justified, because these are activities, which are subjects of the specific Acts to mandate the P&I insurance policy.

(d) Damages occurred by normal operation of activities, which are burdening on the environment.

(e) Damages occurred by activities of subcontractors (the coverage may extent to activities of subcontractors by specific clause in insurance policy), etc.

In case of occurrence of damages, which are specified in exclusions, the coverage of insurance policy is not extend to them, so the insured person shall not require the insurance company to exempt him from paying compensation or restitution. That does not affect the requirement of insurer to pay for other damages, except for exemption below paying for damages. Exemptions are established in the Civil Code, but the insurers often use special rules of exemptions too. For example the insurer may exempt from paying, if the insured person (the person who is burdening on the environment) break the law or Authority's decision, which protects the environment, or if he is fined by the Authority to pay penalties.

An example for breaking the law is non-compliance of obligation relating to damage control and to the prevention and mitigation of damages,[72] or in case of occurring damages on the environment non-compliance of the commitments established by the Authority's decision. The co-insurance often used by insurers to inspire to keep the rules of obligation relating to damage control and to the prevention and mitigation of damages, which has a different types in practice.[73] Nevertheless, we need to pay attention on general rules of insurance policy in the Civil Code, like the obligation of disclosure and notification of changes,[74] or the obligation of reporting the occurrence of an insured event.[75] The insurance company shall be exempt from its payment obligation if it is able to prove that damages have been caused unlawfully, either intentionally or by gross negligence, by: a) the insured person or the contracting party; b) any family member living in their household, any managing partner or any employee, member or agent working in a position specified in the standard contract terms; or c) any executive officer of the insured legal person specified in the standard contract terms, or any member, employee or agent of such insured legal person authorized to manage the insured property.[76]

[72] The c) point of first paragraph of the 101. § on the Environmental Protection Act.
[73] Vértesy László: Kockázatkezelés és biztosítás, *Gazdaság és Társadalom*, 2013/1, 38.
[74] (3)-(5) paragraphs of 6:452. § on the Civil Code.
[75] The 6:453. § on the Civil Code.
[76] (1)-(2) paragraphs of 6:464. § on the Civil Code.

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Rule of 6:465. § on the Civil Code about obligation of preservation is parallel with rule of c) point of first paragraph of 101. § on the Environmental Protection Act, which is about the obligation relating to damage control and to the prevention and mitigation of damages in case of occurring damages on the environment. Following the occurrence of an insurance event, the insured person shall be entitled to implement any changes regarding the condition of the insured property within a time limit stipulated in the contract only to the extent that is necessary for mitigating damages. The insurance company's settlement obligation shall not take effect if, as a consequence of any change greater than that which is permitted, it becomes impossible to clarify the basic circumstances from the point of view of assessing the payment obligation of the insurance company.

Finally, we cannot forget the statute of limitations, which exclude the enforcement of claims against insurer by judicial process. Insurer's paying is not necessarily consequence of torts. The injured party shall not be entitled to lodge his claim directly to the insurance company.[77] Nevertheless, if the court has ruled against the insured person (tortfeasor), doesn't mean definitely paying of insurer. Insurer must pay compensation instead of insured person – so the scope of verdict of court is extend to the insurance company -, if it has participated in the lawsuit, provided for the insured person's legal representation, or he has waived the above.[78] It means if the insurer was not participated in the lawsuit, than the verdict of court doesn't obligate him. Regard to that, the paying of insurer stems from relative legal relationship the provisions on statute of limitations shall apply. The reformed rules of statue of limitation on the Civil Code are dispositive rules, which means the signatories to the treaty – only with their contract in writing[79] – may derogate from the provisions of the Act. The insurers often derogate from the provisions of the limitation in the standard contract terms. The standard contract terms in the environmental liability insurance contracts examined in this research were used rules derogated from the provisions of limitations, which usually was shorting the general time of limitation (5 years) to one year rated upon the time of the due date of the claim. In regard to the ELI insurance the due date of the claim is time of occurring of the insured event, so if is the time of the occurrence of the damage.[80] In regard to the damages in the environment is hard to find the correct time of the occurrence of the damage, because the time of the conduct of polluter (tortfeasor) often diverge from the time of the occurrence of the damage, what is more in many instances taking may years.[81] It means that the insured person shall claim the insurer to pay in one year rated upon the time of occurrence of insured event.

[77] Újváriné Antal Edit: Biztosítási szerződés, in: Majoros Tünde (szerk.): *Kereskedelmi szerződések alapvető szabályai*, Budapest, Patrocinium Kft., 2015., 255.
[78] 6:474. § (3) on the Civil Code
[79] 6:22. § (3) on the Civil Code
[80] Gondosné dr. Pusztahelyi Réka: *A magánjogi elévülés dogmatikai alapjai (PhD értekezés);* Miskolc, 2013, 106.
[81] Csák 2012, 18-19.

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From the time of occurrence of the damage, the time of limitation is elapsing, and in regard to the general length of the lawsuits is perceptible that we cannot find – leastwise infrequently – lawsuit in which was the court came to a final judgement during one year. So if the insurer has not participated in the lawsuit the claim against insurance company may lapse.[82] Advantage of this is impulsive effect on tortfeasor to validate his claim as soon as possible, or see to participate of the insurer in the lawsuit. If the tortfeasor (insured person) fail to applicate to intervene the insurance company, he must pay the compensation or restitution from his own assets, and lapse of the claims against insurer has relatively high potential. The exemption by the insurer is good for the injured party too, because the insurer have sufficient assets to cover the costs and damages, or the restitution. These terms in the environmental liability insurance policy does indeed give undue advantage to insurer companies,[83] so in case of lawsuit the court may establish the unfairness of them. So notification of the damages by the insured person is important, because with this the insurer becomes aware of damage, and so it is essential that in case of lawsuit the insured person applicate to intervene of insurer.

Conclusion

On the whole can be stated that, Hungary defaulted – leastwise inadequately − its requirements prescribed by Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. On the basis of experiences of previous years creation of government's decree about environmental assurances is topical, because environmental damages are arising more often. In my eye, the best assurance should be prescribing it mandatory to make a contract P&I insurance for cover the environmental damages. The commitment should concern for the firms, which are proceeding activities threaten the environment. These activities should determine by the decree. Of course we cannot forget to encourage firms to contract environmental liability insurance. The numbers of contracts, which are rest on voluntary commitment, should be rise with legislation and maybe other different solutions. Example for the legislation should be reduced levels of taxation, and example for the latter should be different allowances in other insurance policies for firms which has coverage for environmental damages (low-priced insurance premium should pay a firms in environmental liability insurance contract which has other insurance contract – for example property insurance or D&O liability insurance – with the same insurer company).

Should be guarantee significance to prescribe regulations which should obligate to secure the adequate assurance during permit granting procedures, like condition of authorization, before permitting the activity for the firms which can pollute the environment.

[82] Should be noted that the elapsed demand can claim by juridical process, but if the respondent (insurance company) pleas the limitation exception in lawsuit the claim lose his validation.
[83] Pusztahelyi 2013, 124.

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In view of the primary function of protection of environment is prevention, I think that, the firms which activities pollutes the environment could do integrated innovations, which could reduce the environmental pressure, whereby could prevent or release the risk of environmental damages. In this perspective, should form and separate higher budget estimate at State level to tender for firms, which activities pollutes the environment. These sources of funds should be exclusively utilized for integrated innovations, to aid protection of environment. It has also to be noted, that the all-time Budget Law contains budget estimate to calling for tenders, but the sum of the estimate is in low-level.

I think, is achievable to establish a fund (which should names Fund for Restoration of Environmental Damages – FRED) managed and supervised by state, but separated from state budget, which should cover the restoration costs of environmental damages. The territorial scope of Fund should be in a state or in a regional level. The personal scope of Fund, which should means the commitment of contribution, should be extend to all company groups in Hungary, or – in case of narrower territorial scope – in determined region. Budged of Fund should be finance from contributions of companies obligated to contribute by act of creation of Fund. The sum of the contribution should be affected by multifarious factors. Contribution of defined sum should be prescribed by act for one year (or for some other period), which should rise other factors. This factor should be for example, if pollution of the activities of companies will rated to different levels, like in the Proposal of Hungarian government, and accordingly should defined a multiplier number. Consequently, the product of substrate sum and multiplier number should determine the sum total for contribution. The assets of Fund should require and set up the companies, which were performed the commitment of contribution before occur of the environmental damage. Of course these assets can be set up only to rehabilitate and repair the damaged environment.

Accordingly, it can therefore be concluded that the legislation is important in state level, which can mandate, but leastwise encourage the companies to invest more money to protection of environment, which can be feasible to avoid, to prevent, but leastwise minimize the environmental damages, and if they occur, than eliminate them.

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