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ENVIRONMENTAL CRIME AND ENVIRONMENTAL CRIMINAL LAW IN HUNGARY

I. A few problems of protection of the environment through criminal law

For a long time conducts damaging the environment were not considered to be serious by legislators, as acts of this kind did not use to mean danger of such extent that would have required the involvement of the criminal law, furthermore there was a lack of social (green) movements that would have been able to articulate the demand for the protection of the environment towards the political actors.

Nowadays, according to the opinion of the practitioners of the criminal sciences as well, the environment actually needs the protection of the criminal law [1, pp. 2434-2435] and breaches of the norm of criminal law protecting the environment are to count with legal effects of the criminal law [2, p. 182].

When examining the kinds of conduct that are damaging the environment and that are relevant from the criminal point of view, it has to be stated that there is no production without damaging the environment, or they are just a

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possibility in several fields of the natural processes, without knowing the concrete solution [3, p. 104].

The legal situation of the protection of the environment in the developed capitalist countries is characterized – and it is also relevant in the case of the criminal law in a leveraged way as well – that as long as the economic policy of the welfare society and state based on the economic philosophy of Myrdal Keynes directed on total employment was the dominating trend, the protection of the environment had its central place in the legislation, the implementation, and the jurisprudence. The principles and the normative regulations of the protection of the environment laid down by the European Union and proclaimed in the USA as well, have seemingly been left unchanged – at least formally - by the neoliberal economy philosophy, which has got monetary bases and was worked out by Friedrich Hayek and Milton Fridman. [4, p. 53.]

In fact, a dangerous trend has been started worldwide that has started to empty the legal instruments of the protection of the environment. The environmental aspects have been more and more subordinated to the interests of comfort aspects of economy and civilization in the capital-gain oriented economy, e.g. oil is being transported on high seas in tankers with single walls because of cost-saving considerations.

Legal regulations on the environment are to determine the leaders (e.g. managers, executive directors); the management bodies (management board, supervisory board) of the economic (producer) units, such as the environmental obligations for the employees of the economic (producer) units, and the potential legal consequences of criminal law are to be connected to them. The environmental criminal law means thus a barrier for the production conditions. Such barriers, however, are absolutely necessary in the interest of a really effective environmental criminal law: these are only sensible economic interests

that should be left room and not such economic interests that dominate over environmental ones.

It is a real problem in connection with environmental crimes that they are often not realized through the intention of endangering or damaging but through the satisfaction of some kind of human necessity. The application of legal consequences of the criminal law actually raises concerns without the presence of the intention, in such cases it can go about liability for negligence [5, p. 662].

In the case of this latter liability configuration the counterargument can be that the damaging of the environment emerges only out of the eventual result and it will be recognizable for the offender, and it may even happen that it is only a scientific analysis that can manifest the damage of the environment [6, p 35].

Special mention should also be made of the phenomenon of the so called waste disposal between states (waste tourism). In such cases the waste that is to be disposed for high costs is not disposed in the country where it arose – mainly dangerous waste – but it is transported into another country and it is simply left there illegally [7, p. 138].

An extremely dangerous type of the waste tourism is the so called plutonium tourism [8, p. 730].

II. The characteristics of the environmental crime in Hungary

Katalin Tilki has carried out the most comprehensive empirical research related to the discovering and identifying of the Hungarian characteristics of the environmental crime. Besides the criminal research of Tilki the literary work of József Horváth, Ferenc Obert and Szilveszter Dunavölgyi is also worth mentioning [9, p. 21].

Based on the criminal statistics the Hungarian environmental criminology could be labeled as «symbolic» throughout the years of the 1980s, because there were hardly any crimes reported nationally (for instance 3-3 were reported in 1980 due to damage caused to the environment and the nature, in 1981 only 1 reported case of harm to the environment and 0(!) harm to the nature were reported, in 1982 there were 2-2 reported cases respectively, and in 1983 only 2 of the former and 4 of the latter cases were reported) [10, p. 207].

The registered environmental crimes started to increase noticeably from the early years of 1990. This practically meant that for example the registered environmental offences rose to more than 10 (more precisely 12), and the denounced perpetrators (of environmental harm) passed the «10-limit» in 1994.

The number of environmental offences peaked at 41 reported crimes in 1997, while reported harms to nature had already reached a sudden increase in 1995 with 66 criminal actions per year.

Nowadays the environmental offences are registered at 30 per year, the harm to nature and related offences at 100 per year, and the violation of the order of waste management is around 200 registered criminal acts per year. (The reported acts of the illegal placement of environmentally hazardous waste have been under 20 recently.)

The most common places for perpetrations of environmental offences are: Pest, Bács-Kiskun, Jász-Nagykun-Szolnok and Csongrád County. Places most likely to be subjects to harm to nature are: Szabolcs-Szatmár-Bereg, Hajdú-Bihar, Csongrád, Bács-Kiskun and Békés County.

The perpetrators of the environmental offences are mainly (90%) men. Those involved and accused include more white-collar workers than do perpetrators of other criminal acts. Approximately one-third of the perpetrators lived in Pest (34%) and Bács-Kiskun County (29%). Almost one-half of those

involved and accused lived in a city or town (49%), while 39% lived in a village, and the rest lived on a farm.

More than four-fifths (85%) of the perpetrators are first offenders. The number of recidivists is small (3 people), while the number of convicts sentenced to imprisonment is also minimal (6 people). Drugs are not involved in the offences. The use of the most severe coercive measures restricting personal freedom was not common [11, p. 99].

As a main penalty the court usually a fine is imposed by the court, an aggregate (sum) of 250 days, and the sum of one single day was 150 forint [11, p. 238].

Regarding age, the perpetrators causing harm to nature are somehow younger than those causing damage to the environment. The perpetrators comprise mainly of (according to occupation) white-collar workers, blue-collar workers and unemployed. It is worth mentioning that the perpetrators often include hunters.

One-third of the perpetrators are foreign citizens, from which the number of Italians is the highest (2/3 of the foreign perpetrators). Foreign perpetrators also include: German, Roman, Croatian, Bulgarian, Austrian and French perpetrators as well.

Most of the accused live in Hajdú-Bihar and Bács-Kiskun County. Few accused were in pre-trial detention, but with regards to the perpetrators of environmental offences the court often ordained the most severe coercive measures restricting personal freedom in case of criminal actions with a good reason to suspect [12, p. 220].

The role of the environmental authorities is essential in case of environmental actions, because they are in a position of identifying the causes and actions of environmental offences.

The national park-directorates (of Hortobágy, Órség, etc.) should be mentioned since their «people» (rangers, biologists) are «out there» protecting and wandering around the nature conservation areas, forests, etc. and therefore they could witness the environmental harms at the first place [12, p. 235].

In connection with the official persecution of the environmental crimes the high quality professional work of the customs officers of the National Tax and Customs Administration of Hungary (NTCA) must be mentioned as well [13, p. 81].

The customs officers – like the rangers – are in a special position, because they can be the first to potentially detect the environmental crimes. Customs officers apply a special method of risk analysis, which means in case of specific events the shipment is subject to customs examination and clearance even when everything seems legal. These events include incriminating moments or the suspicion of environmental harm.

In the literature we can read about a proposal to effectively detect environmental crimes according to which an environmental investigative body should be established [9, p. 33].

The only thing that has been implemented from this proposal is that under the Economic Security Department of the National Police Headquarter the Environmental Crimes Unit has been established.

However such a unit can function effectively only when it possesses those professional environmental experience and data bases, which are the requirements of successful findings; moreover it has to possess such operative reconnaissance capabilities and criminal records that would provide support and would mean a solution to the currently lacked procedural options.

According to József Horváth investigative tasks should be engaged in at least six law enforcement centers. This could be reasoned by the fact, that

nowadays there are no such polymaths (Renaissance man) who could fill or hold different professions at a high level. It is unnecessary to retrain environmental specialists to detectives, and professional policemen cannot be expected to be naturalists or study plant anatomy in their free time either.

The solution would be to establish a group of professionals (policeman, biologist, zoologist, etc.) and if their work was supported by up-to-date information and communication devices and technologies. Organizing quick and mobile scout units with lab and reconnaissance cars would be an effective tool to catch or surprise someone in the act as well as to scout [9, p. 34].

Based on our current law the pursuit of environmental actions belongs to the duties of the police, the counsel, and the national tax and customs administration.

Domestic experience showed that establishing an independent investigation unit for the pursuit of environmental offences does not seem to be realistic. I am reflecting on the case of the tax investigation authorities (collectors), which resulted in their merge into the «general» organization of the police.

Establishing an independent detective unit for pursuing environmental crimes is not on agenda. First of all it has organizational barriers (professional jealousy, rivalry, etc.), secondly it lacks the commitment from the political elite. At least it could be viewed as a success that the environmental offences have a separate, independent department at the National Bureau of Investigation.

III. Crimes against the environment and the nature in Hungary

The protection of the environment through criminal law goes back on a considerable tradition in the Hungarian criminal law. Even the first codified penal code (Article V of 1878) includes a matter of fact with environmental

content, which facilitated the necessary legal actions against those poisoning the wells or waters.

Article II of 1950, the Hungarian penal code of that period, codified only the rules of the so called General Part, consequently it did not contain any environmental penal regulations. We can find a separate statutory matter of fact in Chapter XII of Article V of 1961 with the term «well-poisoning».

Hungary was without doubt one of the firsts to fight against environmental crime with its «hidden» modification of the Penal Code in Act II of 1976 about the protection of the human environment, however, the legal provision of «offences against the environment» seemed already from the beginning on unsuitable for its intended purpose as its formulation was so general that it did not allow for a concrete usage, thus it is not surprising that no criminal procedure was started because of such offence as long as this regulation was in force [14, p. 17].

The beginning of the modern Hungarian environmental criminal law dates back to the entry into force of Article IV of 1978. At that time the legislator intended to protect the elements of the environment and nature with two items of legal provision (harm against the environment and harm against nature).

The best proof of handling offenses against the environment as a «stepchild» is the fact that the contemporary university textbooks on criminal law did not handle this type of crime at all.

From 1996 on the regulation of the Hungarian criminal law already included the crime «illegal disposal of waste harmful for the environment» in the Hungarian Penal Code

The new Hungarian penal code, Article C of 2012 on the Penal Code, got into force on 1st of July 2013. Chapter XXIII of the new Penal Code regulates «The crimes against the environment and nature» [15, p. 74]. There has been an

obvious demand for the autonomous protection of the environment in our days according to the legislator; consequently, it is appropriate to fix the environmental matters of facts in a separate chapter, separated from other matters of facts concerning the public health. This regulation-technical solution was urged for a long time by several outstanding lawyers of criminal law.

III.1. The general characteristics of the crimes against the environment and the nature

The title of the chapter, or rather the fact of an individual chapter itself expresses the legal objects protected by the facts of the case of the chapter such as their importance much better than the Criminal Code in force, as activities damaging the environment and others in connection with these were not to be found in an individual chapter or under a separate title earlier.

Nowadays there has been an obvious demand for the autonomy protection of the environment; consequently it is justified to include the facts of the case concerning the protection of the environment in an individual chapter, separated from other facts of the case dealing with public health.

The facts of the case belonging to this chapter are really complex, they have got some common features, however, that enable to handle them in one chapter. Such common feature is that the environment and the nature, and their elements (see Environmental Offenses, Damaging of Natural Environment) are protected. The crimes Cruelty to Animals and the Organization of Forbidden Animal Fight are to be found in the chapter on the protection of the environment as well as they have the same legal object i.e. the sparing of the animals and their humanitarian treatment. This shows namely a strong relationship with the protection of the biota under Environmental Offenses and the protection of fauna and the flora under Damaging the Natural Environment. This is also the

reason for the establishment of the facts of the case of the game poaching and fish poaching.

The reason for including the facts of the case concerning nuclear energy in the chapter dealing with the classical protection of the environment is that the misuse of the nuclear energy is qualified as a crime against the environment by the European Union (Directive 2008/99/EC of the European Parliament and of the Council on the protection of the environment through criminal law, hereinafter called: Directive 2008/99/EC).

It is important to emphasize that according to Directive 2008/99/EC, the illegal operation of a plant carrying out dangerous activities or storing dangerous substances or preparations, which outside the plant cause or may cause the death or serious injury to any person, or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants counts as a crime.

If a person operates a nuclear facility without licence or exceeding the frames of the licence, he constitutes the facts of the case of the misuse of the operation of nuclear facilities according to § 264/A of the Criminal Code in force. However, if the dangerous material or the dangerous activity does not mean a nuclear activity but one in connection with e.g. chemical substances and activities in connection with them (see red mud); no crime is realized for the illegal operation according to Hungarian law.

III.2.Environmental Offenses

The fact of the case of the environmental offenses is a frame-disposition. The individual legal provisions making up the content of the fact of the case are as follows: Act LIII of 1995 on the general provisions of the protection of the environment, the Government Order No. 219/2004 (VII.21.) on certain provisions in connection with the protection of the air, the Government Order

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No. 220/2004 (VII.21.) on the provisions for the protection of the surface waters, and the Government Order No. 21/1970 (VI.21.) on the protection of trees.

The objects of the offense of the environmental offenses are the earth, the air, the water, the biota (flora and fauna), and their constituents. It is unnecessary to determine the built artificial environments as well as the object of the offense, as the actions damaging it are considered to be criminal offenses, too, on the basis of other facts of the case. The definition is delivered by the Act LIII of 1995 on the general legal provisions of the protection of the environment.

The protection of the earth extends to the protection of the surface of the earth and its layers underneath the surface, the soil, the rocks and minerals, their natural forms and processes. The protection of the environment involves the protection of the fertility, the structure, the water and air household of the soil, furthermore that of its biota as well. The protection of the water extends both to the surface waters and the ground waters, their resources, their quality (including their temperature conditions, too), their quantity, the beds and coasts of the surface waters, the water tables and their overburdens, such as to (protected) regions standing under special protection appointed in connection with water – either in legal provisions or in the regulations of the authorities.

The protection of the air extends to the atmosphere as a whole, to its processes and components, and the climate. The protection of the biota – with regards to the natural processes of the ecological system, the maintenance of its proportions and its ability to function – extends to all living organisms, their communities, and habitats. The notion component is not determined by the special legal provisions; it is usually to be examined in the chemical or biological sense of the meaning. The chemical structure means (e.g. in the case

of air/waters) the natural chemical composition that is typical for a certain place and the alterations of which are to be measured. (However, the water, the earth may have other «components» as well, e.g. the typical fauna or flora population of that region).

The ways of criminal conduct – while sanctions grow stricter and stricter – are as follows:

- the endangerment;
- the restorable damaging;
- the irreparable damaging of the objects of the offense.

The pollution itself is not so dangerous for the society to an extent that it could be qualified as a criminal offense. The pollution is to be of a considerable level in order to qualify it as a criminal offense. The determination of the considerable level is the task of an expert. As the categories of danger and the toxic effects of the various chemical substances may differ a lot, its criminality is not to be associated with the defined multiple of the limit value. That is why the establishment of the criminal liability is subject to pollution of «considerable level» by law.

Endangerment: It is an activity or omission that can cause the damage of the environment e.g. the pollution of the environment: the load exceeding the emission threshold value of some element of the environment [fact of the case of endangerment].

Damage: It is an activity with an effect leading to the damage of the environment, and the damage of the environment means a change, the pollution or requisition of the environment or of some of its elements to an extent that as a result of it its natural or previous state (quality) is not to be restored or only with intervenience, i.e. it has an in favourable effect on the biota [material variety – it gets completed only with the occurrence of the result].

The act is to be committed through malice or negligently by any person. In the case of malice, the perpetrator is conscious of the fact that his conduct is (or may be) endangering or damaging and he is at least indifferent as regards to this (real or possible) consequence. Both luxuria (the unfounded hope of the lack of the harmful consequences) and the negligence (the non-recognition of the harmful effects as consequences) can be typical in the case of negligent offense.

The grounds for the termination of the criminality, i.e. it enables the reduction of the penalty without limitation if the perpetrator restores the danger caused by his activity, i.e. he terminates the environmental damage before ruling is delivered in the first instance.

Issues of commutation and demarcation: the simultaneous or continuous endangerment of several environmental elements, i.e. their damage is a natural unity.

III.3. Damaging the Natural Environment

The law divides the fact of the case of the damaging the environment into two different sections structurally, the first one includes the provisions on the protection of species, and the second one those on the values of the nature and its territories. The matter of fact has become more transparent and simple and easier to apply.

The matter of fact of the damaging the environment is a frame-disposition, too. The individual provisions for the fact of the case are the Act LIII of 1995 on the protection of the environment, the Council Regulation (EC) No 338/97 of December 1996 on the protection of species of wild fauna and flora by regulating trade therein, and its modifications, Act XXXV of 2000 on the protection of the flora, the Regulation No 13/2001. (V.9.) of the Ministry of the Protection of the Environment on the specially protected species of flora and

fauna, and caves, furthermore the Regulation No 13/2001 (V.9.) of the Ministry of the Protection of the Environment on the publication of the species of flora and fauna important from the point of view of the protection of the environment within the European Union, the Government Regulation No 348/2006 (XII.23) on the detailed regulation of the protection, keeping, presenting, and utilization of the protected species of fauna, the Government Regulation No, the Government Regulation No 67/1998 (IV.3) on the protected and highly protected communities, and the Government Regulation No 275/2004 (X.8.) on the protected territories important from the point of view of the European Union.

The law states the objects of the offense as regards to the background-regulations, especially to the system of notions of the Act LIII of 1995, furthermore to the membership in the European Union.

The objects of offense in the case of crimes of damaging the environment are on the one hand any species of a living organism under special protection, on the other hand any species of protected living organism. As for these latter, the damaging of the environment requires criminal liability only in that case if the total sum of the value of the species of protected organisms determined in monetary terms in a separate legal provision reaches the minimum level of the value expressed in monetary terms determined for species of living organisms under special protection. Annex No 1 and Annex No 2 of the Regulation No 13/2001. (V. 9.) of the Ministry of Environment include the protected species of flora and fauna and their values expressed in monetary terms. As further objects of offense count the species of living organisms belonging under the force of Annex I and Annex II of the Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade herein.

The Council Regulation (EC) No 338/97 of December 1996 on the protection of species of wild fauna and flora by regulating trade herein includes

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the detailed regulation of the importation, exportation, and re-exportation of the species of flora and fauna listed in the Annex of the regulation. The Annex of the Council regulation can be modified by the Commission of the European Communities as well, such is e.g. Commission Regulation (EU) No 101/2012 of 6 February 2012 amending Council Regulation (EC) No 336/97 on the protection of species of wild fauna and flora by regulating trade, which provides a list of the species of flora and fauna under the force of the regulation. The objects of offense in this respect are the species of living organisms to be found in the regulations of the Commission but listed in Annex A and Annex B of the regulations of the Council as well.

The notion of the living organism is determined by the law within the frame of the built-in interpretative provisions in accordance with the background-regulations.

The objects of offense of the crime – defined under the separate subsection (1) §243 – are the Natura 2000 areas, the protected caves, the protected sites, and the population or natural habitat of protected living organisms. The definition of the notions of the individual categories is given by the Act on Protection of Natural Environment.

Natura 2000 areas are according to the legal regulation on the protected sites of European Community importance special areas of bird protection, special areas of protection or sites designated as such. This category was introduced into Hungarian law by the Government Regulation No 275/2004 (X.8) on the protected sites of European Community importance, and besides this, the compliance with the regulations of the Union means the series of new tasks for the protection of the natural environment.

According to Directive 2009/147/EC on the conservation of wild birds (Birds Directive), and Directive 92/43/EEC on the conservation of natural

habitats and of wild fauna and flora (Habitats Directive), the protected sites of Community importance, the so called net of Natura 2000 are to be designated. The fact of the case ensures the protection of these areas as well.

The criminal conduct is unlawful in the case of the objects of offense determined under § 241 Criminal Code: acquisition, keeping, marketing, importation to the territory of the country, exportation out of the country, transportation through the country, trading, damaging, and destruction.

The criminal conduct is unlawful in the case of the objects of offense determined in Subsection (1) § 243 Criminal Code: The alteration to a significant extent. The result of the alteration is a change of such an extent that actually causes damage or drawback, namely all activities that are contradictory to the contents of the Act on the Protection of Natural Environment. The alteration means the alteration of the nature of the area and its usage, which is a notion of a wide sense, to this belongs the alteration of the extent of the area as well. The establishment of the significant extent is always the task of an expert.

The aggravated case of the damaging the natural environment if the destruction to the species of living organisms under special protection and the species of protected living organisms is of such extent that the aggregate value of the destroyed species of living organisms expressed in monetary terms is as high as the highest amount determined by specific other legislation for the species of a living organism under special protection.

A further aggravated case is the considerable destruction of species of non-protected living organisms and species of a living organism not under special protection in Hungary but included in the EC regulation, which means the destruction jeopardizing the survival of the population of that living organism.

The criminal offense by way of negligence is connected solely to the aggravated case; the basic case is to be realized only on purpose.

If the collection of plants, animals or eggs under special protection is carried out with the aim of misappropriation, the damaging of the natural environment is to be stated as aggregated crimes.

If the Natura 2000 areas, protected sites, protected caves, and the population or natural habitat of protected living organisms determined in the grundcase suffer significant damage or destruction that are dangerous for the society to a bigger extent, they are qualified as aggravated cases.

The law rules penalty for the negligent commitment of the criminal offense determined in Subsection (1) § 243 as well.

III.4.Cruelty to Animals

The matter of fact of the cruelty to animals is not a frame-disposition, although Act XXVIII of 1998 on the protection and the sparing of animals is the background legislation from the point of view of the fact of the case, the criminal conduct is determined in the fact of the case by a penal norm.

Act XXVIII distinguishes between the killing of vertebrate and non-vertebrate animals. The criminal law sanctions the most severe ones from among the conducts prohibited under the Act XXVIII.

The object of the offense of the cruelty to animals is according to Subsection (1) phase a) § 244 the vertebrate animal, which is an animal on the highest level of the development with an inner solidification skeleton. Subsection (1) phase b) § 244 complements the object of the offense, designating the dangerous animal as special vertebrate animal.

The dangerous animals are listed in the Appendix 1 of the joint regulation No 8/1999 (VII.13.) of KöM-FVM-NKÖM-BM on the dangerous animals and the detailed rules on the permitting of their keeping.

The criminal conducts of the crime in Subsection (1) phase a) § 244 are the unjustified abuse and the unjustified mistreatment of vertebrate animals which result in the permanent damage to the animal's health or in its destruction.

The criminal conducts of Subsection (1) phase b) § 244 are the expulsion, the abandoning, and the dispossessing of a vertebrate animal or dangerous animal. The cause of the criminality of this kind of conduct is not only the vulnerable situation of the animal but the prevention of the emergency that may be caused by the animal left alone, that is why the scope of the dangerous animals is not constricted on the group of the dangerous vertebrate animals by the law.

The reason for not applying the formulation causing «physical pain» instead of abuse in the matter of fact is that the law does not intend to connect the criminal sanctioning to the sensation and result caused in the animal but to the offender's conduct.

Obviously, not all kinds of physical or psychic abuse are to be considered to be as cruelty to animals, as e.g. the physical impact done with the aim of dressage or training can be necessary. However, even in this case it is to be ranked and determined which means implemented are to be punished and which are not. All kinds of physical impact or malpractice count as unjustified treatment that cannot be ranked as abuse and this kind of criminal conduct evaluates the nature of the process of the abuse and the suffering of the animal.

It is not necessary for the criminality that the perpetrator actually extinguishes the life of the animal or that the animal suffers permanent damage of health, it is enough that the perpetrator's action is suitable to cause these. That is why the extinguishing of the life of the animal is not an individual criminal

conduct itself, the occurrence of this result is to be valued as **aggravating** circumstance in the course of sentencing.

The animal's life can be extinguished in the case of an acceptable cause or circumstance according to Act XXVIII. The followings are qualified as such acceptable causes or circumstances: the aim of catering in the case of animals for slaughter, the production of fur in the case of animals kept traditionally for this purpose, the control of the species, incurable disease or injury, the control of epidemic diseases and prevention, the control of pests, the prevention of attacks not to be avoided in other ways, and scientific research. The crime of cruelty to animals is not to be established in the above cases.

The criminal conduct formulated in Subsection (1) phase a) § 244 is to be committed by any person, so e.g. if someone carries out research on animal without permission or not according to the terms of the permission, or if somebody does an activity which is subject to the veterinary degree without authorisation.

The criminal conduct formulated in Subsection (1) phase b) § 244 is the abandonment, the dispossessing, and the expulsion of vertebrate animals or dangerous animals kept by a human being, consequently the subject of this term is a special one, it is only the animal's keeper that counts as offender and whose notion is included in Act XXVIII.

The more severe assessment and punishment of cases causing undue suffering to the animal is justified with the enhanced hazard of the perpetrator of activities causing undue suffering carried out with outmost brutality and that of the activity itself for the society.

It is considered to be a qualifying circumstance as well if the cruelty to animals causes the permanent damage to several animals or the destruction of more than one animal.

The number of counts of the criminal offense is to be determined by the number the instrumentalities used in the offense, with the exception of the legal entities determined in Subsection (2) phase b) § 244.

The act creates by way of derogation from the previous Criminal Code new facts of the case with the titles game poaching and fish poaching by way of taking them out of the fact of the case of the cruelty to animals. The reason for this is on the one hand that neither the unauthorized hunting nor the conducts to be found in the facts of the case of the cruelty to animals fit exactly into the background provision, on the other hand their content does not match with the cruelty to animals either as it is not about cruelty.

IV. Conclusion

It is an important thing in connection with the actions damaging the environment that the application of the criminal law should take place really *ultimo ratio*. It is considered to be an aspect of the effectiveness of the law that the application of the sanctions in the case of delicts should be in a proportional way, i.e. the legislator should not answer with a reprisal of the criminal law immediately in the case of a negligent act but either an administrative or an infraction process should be prior to it [16, p. 165].

The necessity of the sanctioning of a legal entity through criminal law, so it seems, is a closed matter.[17, p. 41] The principle *societas delinquere non potest* was a long-lasting one in the literature but this legal principle has eroded in the risk-society [18, p. 235].

It has been proved by research on the effectiveness of law as well that if the legislator's action is too strict towards the offender, the restrictive force of the regulations does not work above a certain level of strictness any more, e.g. even if the penalty for the slightest environmental offense were the death sentence,

there would not be more people observing the environmental regulations or the number of crimes against the environment would not decrease, respectively. It is not worth switching in the expensive state apparatus of criminal procedure in vain.

The protection of the environment through criminal law is to be enhanced if the state has the environmental norms observed. Regulations on the environment are partly to be interpreted as a virtual legal material because of the notion of the procedural deficiency [19, p. 20]. It is a general phenomenon in the regulation of the protection of the environment through criminal law that the regulatory effectiveness is not adequate or it is of a low level and it is the respective state power that bears the responsibility and has the opportunity in this concern.

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Кьогальмі Л.

Екологічні злочини та екологічне кримінальне право в Угорщині

Охорона навколишнього середовища засобами кримінального права має значні традиції в угорському кримінальному праві. Немає виробництва яке б не заподіювало шкоду навколишньому середовищу і попередження у багатьох сферах виробництва часто є лише як можливість, саме тому буває важко обгрунтовувати юридичні підстави покарання за екологічні злочини. Кримінальне право може працювати дійсно ефективно, якщо суспільство приділяє аналогічну увагу іншим галузям права (наприклад, цивільному, адміністративному право тощо). Покарання правопорушника не є достатнім вирішенням завданого екологічного збитку, і репаративна позиція (наприклад, в *intergrum Restitutio*) повинна мати пріоритет при виробленні правових висновків. Охорона навколишнього середовища засобами кримінального права має бути посилена, шляхом здійснення державою нагляду за дотриманням екологічних норм. Природоохоронне законодавство частково має інтерпретуватися в якості віртуального правового матеріалу для усунення недоліків, що виявляються при виконанні.

Ключові слова: кримінальне право, екологічні злочини, директива, юридична особа, прихований злочин, ринкова економіка.

Кёгальми Л.

Экологические преступления и экологическое уголовное право в Венгрии

Охрана окружающей среды средствами уголовного права имеет значительные традиции в венгерском уголовном праве. Нет производства которое бы не причиняло вред окружающей среде, предупреждение вреда

во многих сферах производства часто выступает лишь как возможность, поэтому бывает трудно обосновывать юридические основания наказания за экологические преступления. Уголовное право может работать действительно эффективно, если общество уделяет аналогичное внимание другим отраслям права (например, гражданскому, административному праву и т. д.). Наказание правонарушителя не является достаточным разрешением нанесенного экологического ущерба, и репаративная позиция (например, в *intergrum Restitutio*) должна иметь приоритет при выработке правовых заключений. Охрана окружающей среды средствами уголовного права должна быть усилена, путем осуществления государством надзора за соблюдением экологических норм. Природоохранное законодательство отчасти должно интерпретироваться в качестве виртуального правового материала для устранения недостатков, выявляемых при исполнении.

Ключевые слова: уголовное право, экологические преступления, директива, юридическое лицо, скрытое преступление, рыночная экономика.

Köhalmi L.

Environmental crime and environmental criminal law in Hungary

The protection of the environment through criminal law goes back on a considerable tradition in the Hungarian material criminal law. There is no production without damaging the environment and the protection is in many fields of the production only a possibility that is why it is often difficult to provide reasons for the legal grounds of the penalty for environmental crimes. Criminal law can work really effectively if the society provides the branches of law (e.g. civil law, administrative law etc.) as well. The punishment of the delinquent is not a sufficient solution of the environmental damage, and it is to

be considered whether the reparative point of view (e.g. in *intergrum restitutio*) should enjoy priority when applying legal consequences. The protection of the environment through criminal law is to be enhanced when the environmental norms are being observed by the state. The environmental legislation is partly to be interpreted as virtual legal material because of the deficient factor of the execution.

Key words: criminal law, environmental crime, directive, juristic person, latent crime, market economy.