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**Protection of the environment in the European Union (Green Deal)
Practical experience in Hungary from the perspective of the
Prosecution Service****

ABSTRACT: In the recent years, greater importance and attention have been paid to the protection of environment. The European Union has also recognized the risks of climate change and the risks of negative impacts on the ecosystem. In 2019, the European Union issued the so-called European Green Deal initiative, with the objective of making Europe the first climate-neutral continent in the world by 2050. In 2022, the Consultative Council of European Prosecutors (CCPE) adopted an Opinion on the role of prosecutors in the protection of the environment. The Hungarian legislation complies with the standards set out in the CCPE Opinion, and the Prosecution Service of Hungary to take effective actions against perpetrators of environmental crimes. Prosecutors play a crucial role in the fight against environmental crime and in enforcing liability for environmental damages.

KEYWORDS: environmental criminal law, European Green Deal, climate change, Consultative Council of European Prosecutors, Prosecution Service.

The wider and smaller natural environment surrounding us is an abundant source of goods, which contributes to the well-being of not only our country but also of the European community and – at least indirectly – of the entire population of the Earth. Hans Bruyninckx, the former Executive Director of the European Environment Agency, who held this position until 1 June 2023, pointed out that the rapid growth of the world's population and economy was leading to an increased use of natural resources. However, the excessive demand on our environment has a negative impact on the ecosystem and triggers climate change. According to available data, 75% of

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the terrestrial environment and about 40% of the marine environment have already severely altered; unfortunately, most of the changes have been negative.¹

In the recent decades, and obviously as a result of this trend, the political and scientific community, including a wide range of scientific disciplines, and civil society have paid greater attention to the protection of the environment. As part of this process, the European Union has also recognized the risks of climate change and the risks of negative impacts on the ecosystem. For this reason, the EU has recently placed environment-protection policy at the heart of EU policy-making, opening the way for initiatives such as the European Green Deal. This document was presented by the European Commission in December 2019, with the objective of making Europe the first climate-neutral continent in the world by 2050. The Commission prescribed the climate neutrality targets and the legal obligations necessary to achieve this in the so-called European Climate Law, which is binding and directly applicable to Member States and entered into force in July 2021.² We all know, however, that it is not the legal norm that really matters, but the results which are actually achieved. The Regulation on the *European Climate Law*³ is therefore far not the end, but a great tool to help us reach the desired results. I believe, it is important to highlight this, because everyone must contribute to the achievement of the aim to the best of their possibilities. In the spirit of this thought, I would like to share some ideas in general about the Prosecution Service, and of course more specifically, about the role played by the Prosecution Service of Hungary in environmental protection.

The close connection between the high-level protection of the environment and the enforcement of human rights is pointed out not only by the European sources of law but also by several international instruments, which fundamentally aim at the preservation and improvement of the present and future generations' quality of life and wellbeing. The Consultative Council of European Prosecutors (CCPE) adopted its Opinion

¹ Bruyninckx, n. d.

² The European Green Deal. Striving to be the first climate-neutral continent https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_hu (Accessed: 20 February 2024).

³ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999.

No. 17 on the role of prosecutors in the protection of the environment in 2022.⁴

The Opinion emphasizes the importance of prevention, but also the idea that the environment should be protected by every possible means, including the means used by administrative and civil law.⁵ In cases, however, where violations of law posing greater danger or causing greater damage occur, those who are liable should be held accountable also by means of criminal law. As a result, Opinion No. 17 clearly displays the need for a coordinated application of the different legal areas, which – as I will elaborate later – is fully accomplished in the work and operation of the Prosecution Service of Hungary.

With regard to environmental crimes, the above-referred CCPE Opinion underlines that these crimes often relate to other serious crimes (such as human-trafficking, drug-trafficking, counterfeiting, cybercrime, corruption and the financing of terrorism).⁶ In addition, perpetration in criminal organization or cross-border crimes often occur. Therefore, sanctions, whether imposed on natural or legal persons, need to comply with the standards of efficiency and proportionality, and they need to be dissuasive. Moreover, the sanction regime needs to include financial and non-financial elements. We should also strive to ensure that not only the direct perpetrators but accomplices, instigators and accessories as well as those who benefit from perpetration should face appropriate legal sanctions.⁷

Considering that environmental crimes are often international, both as far as their commission and their results are concerned, international cooperation is an essential element of effective actions. Every organization, even if indirectly significant to this area of law, can be key to this activity. In this way, apart from the activity of Europol, the activity of Eurojust and professional networks including the European Judicial Network and the European Network of Prosecutors for the Environment must be highly evaluated.

⁴ <https://rm.coe.int/opinion-no-17-2022-en/1680a875de> (Accessed: 24 February 2024).

⁵ Opinion No. 17 (2022) of the Consultative Council of European Prosecutors (CCPE) on the role of prosecutors in the protection of the environment, Chapter III, para 31 and 35.

⁶ Opinion No. 17 (2022) of the Consultative Council of European Prosecutors (CCPE) on the role of prosecutors in the protection of the environment, Chapter IV, para 36.

⁷ Opinion No. 17 (2022) of the Consultative Council of European Prosecutors (CCPE) on the role of prosecutors in the protection of the environment, Chapter IX, Recommendation 5; Chapter IV/B, para 47.

The CCPE Opinion stresses that national prosecution services play a key role in effective actions. Consequently, they need to be provided with the necessary legal and investigative tools, and prosecutors handling environmental cases need to be adequately trained and qualified.⁸

In my opinion, it can be concluded that, on the one hand, the Hungarian legislation complies with the standards set out in the CCPE Opinion, and on the other hand, other conditions are also provided for the Prosecution Service of Hungary to take effective actions against perpetrators of environmental crimes. Let me also briefly note that environmental protection is a recurrent issue at trainings, professional meetings and discussions held by the Prosecution Service. This, I assume, is highly important, since environmental protection is a branch of science and a field of law, where continuous professional development is crucial and necessary for effective professional work.

The Prosecution Service is traditionally viewed as a constitutional, autonomous and independent organization, which, as a contributor to justice, has the exclusive right to exercise the punitive power of the state.⁹ The main activity of the Prosecution Service traditionally focuses on the performance of criminal law tasks. At the same time, it is a less known fact to the public that the Prosecution Service also has duties and carries out activities outside the criminal law field, where, in the protection of the public interest, it contributes to the enforcement of legal provisions in relation to various fields of law.

Specific laws provide for the tasks and competences of the Prosecution Service outside the criminal law field. The Prosecution Service exercises these competences primarily by initiating litigious and non-litigious proceedings at court (called the right to file lawsuits), by launching administrative proceedings and pursuing legal remedy (which are collectively called: action).¹⁰ Accordingly, laws on the environment, nature and the protection of animals specifically empower the Prosecution Service to file lawsuits. Thus, for example, Act LIII of 1995 on the General Rules of Environmental Protection entitles a prosecutor to file a lawsuit to impose a

⁸ Opinion No. 17 (2022) of the Consultative Council of European Prosecutors (CCPE) on the role of prosecutors in the protection of the environment, Chapter V, para 61; Chapter IX, Recommendation 8.

⁹ The Fundamental Law of Hungary, Article 29.

¹⁰ Act CLXIII of 2011 on the Prosecution Service of Hungary (Prosecution Service Act), Section 26 (1).

ban on the activity or to elicit compensation for the damage caused by the activity posing hazard to the environment.¹¹ Since 2012, the Prosecution Service may only examine specific violations of the law coming to its notice, and depending on the outcome, it may recommend the inspected body to take various measures without having the right to change the decision. While fulfilling its duties relating to the protection of public interest and environmental protection, the Prosecution Service can use instruments provided by the law: it can access documents and registers, can request a copy of documents and data from them, can contact other public bodies, business and other entities, or can use an expert.¹² The latter is considered to be a very important instrument during the preliminary procedure due to the complexity of environmental cases.

Prior to a prosecutorial action, for the purpose of procedural economy, the law provides for the possibility of issuing a reminder for the voluntary elimination of the violation of the law, where the offending party itself has the opportunity to restore legality as stated in the reminder.¹³ The result of the procedural economy measure may be, for example, that the party subject to the inspection reduces the environmental pollution by means of technical upgrades and eliminates the pollution that has occurred. The Prosecution Service also plays an active role in the legislative process, both by providing a preliminary professional opinion on draft legislation and by helping to amend existing legislation, for example by initiating legislative amendments.

In addition to the appropriate legislative environment and the widest possible use of international cooperation, cooperation within the organization itself is an important element of effective prosecutorial action against environmentally harmful acts. Both the criminal and non-criminal branches of the Prosecution Service have important tasks relating to environmental protection. Cooperation and sharing information between the two branches are of paramount importance, and a complex approach is therefore essential. Close cooperation between the two branches is necessary both because of the above-mentioned sharing of information, and because it may occur that the liable ones are held accountable in several

¹¹ Act LIII of 1995 on the General Rules of Environmental Protection, Section 109 (1).

¹² Instruction 3/2012 (I. 6.) LÜ issued by the Prosecutor General on the public interest protection tasks of the prosecution service, Section 36 (1).

¹³ Act CLXIII of 2011 on the Prosecution Service of Hungary (Prosecution Service Act), Section 26 (3).

areas of law at the same time. In addition, measures relating to economic law, company law or labour law may also be needed.

The framework for cooperation is defined by two principles: continuity and timeliness, which are realized in the mutual provision and circulation of information, data and documents.¹⁴ In this sense, prosecutors assigned to environmental tasks – which means that specialization in the activity has been introduced – immediately forward information in their possession concerning the criminal law branch to their colleagues in the criminal law field, and they also take the necessary action based on the information received from the criminal law branch.¹⁵ In this context, prosecutors may take actions and initiate administrative proceedings, such as administrative inspections, the imposition of environmental, nature conservation or other administrative fines, or they can impose obligations, restrictions or prohibitions.

The cooperation between the different branches is, of course, mutual: prosecutors in the criminal field send decisions dismissing a complaint or terminating an investigation, expert opinions, indictments and court decisions in criminal proceedings conducted for criminal offences against the environment and nature, which are defined in Chapter XXIII of the Criminal Code, to the public interest prosecutors of the county chief prosecution offices, so that they can take the necessary measures.¹⁶

Unfortunately, the latency rate for environmental offences is extremely high. The main reason for this is that in most cases the victim is a living organism, a community, or a part of the natural or built environment that is not capable of defending their rights on their own. The main source of information for prosecutorial action is the cooperation between the different branches of the Prosecution Service. Furthermore, a smaller amount of information comes from individuals, external bodies through requests, reports and enquiries. Due to the obligation of public bodies, municipalities, other organizations and institutions to cooperate, the environment and nature protection authority informs the Prosecution

¹⁴ Circular 1/2014 (III.31.) LÜ issued by the Prosecutor General on the prosecution's environmental activities, para 3.

¹⁵ Instruction 3/2012 (I. 6.) LÜ issued by the Prosecutor General on the public interest protection tasks of the prosecution service, Section 9(1).

¹⁶ Circular 1/2014 (III.31.) LÜ issued by the Prosecutor General on the prosecution's environmental activities, para 4.

Service of its decisions imposing fines and obligations. The *statistics*¹⁷ show that in 2022 the Prosecution Service took 533 prosecutorial measures in the course of its environmental protection activities. The county chief prosecution offices:

- initiated 279 administrative procedures,
- issued 38 signals,
- brought 42 actions,
- issued 16 reminders and initiations aimed to avoid litigation.

As regards the initiation of proceedings by the Prosecution Service, county chief prosecution offices initiated 156 criminal and 2 administrative proceedings.

It can be concluded that the total number of measures has almost doubled compared to 2021, with a steady and dynamic increase from 2019 onwards. It is particularly noteworthy that the number of criminal proceedings has also increased more than two and a half times, compared to the previous year. There has also been a significant increase in the number of administrative proceedings, which has more than doubled.

As to criminal proceedings, it is usually the violation of waste management regulations that has been registered the most. In 2022, the number of registered offences also increased in the case of environmental and nature damages, but the increase was particularly high for waste management offences. This is partly due to the amendment of the legal definition and stricter regulation of the latter criminal offence.

Finally, I would like to explore a criminal case briefly, as it is an excellent illustration of the necessity and effectiveness of international cooperation, inter-sectoral cooperation among state bodies, and cooperation within the Prosecution Service between the different fields.

The court found the defendants guilty of the offence of violating the waste management regulations and other offences in a case where the Hungarian company concerned did not have a permit for the treatment, disposal, storage, processing and import of waste into the country, nor did it have the necessary machinery and equipment for processing. The defendants, as representatives of the company, agreed with a German citizen to take baled, pre-sorted waste from him, and in return, the German citizen paid them 80 euros for every ton of waste imported into Hungary. To this

¹⁷ Prosecutor General's Report on Activities of the Prosecution Service in 2022, pp. 32-33. <https://ugyeszseg.hu/en/wp-content/uploads/2023/09/angol-nyelvu-kiadvanszerkesztett-kivonat.pdf> (Accessed: 15 February 2024).

end, one of the defendants signed a declaration on behalf of the company, stating that the company had the necessary official authorizations and licences to receive and process the bales.

As a result of this agreement, between June and December 2006, a total of 1,810 tons of bales of waste were imported from Germany. Some of them were stored at the company premises and others at different sites rented by the company.

Through an international cooperation, the German authorities arranged the return of some of the waste to Germany. Then, the Hungarian court re-seized the waste bales still stored in Hungary, and after the expert examination, lifted the seizure of all waste bales and ordered their release to the National Inspectorate for Environment, Nature and Water. These bales of waste have also been partially returned to Germany by the German authorities and, as to the remaining bales, the regional inspectorates obliged the waste owners to comply with their waste management obligations.

At the end of the procedure, the criminal liability of the defendants was established, and the environmentally dangerous situation was also put to an end. The prosecution's action was therefore effective in all respects. In conclusion, I would like to highlight the following: our experience shows that the most effective types of measures, when applied rigorously and consistently, are those aimed at prevention and restoration. It is important to emphasize that in the rule of environmental law prosecutors are key players, who play a crucial role in the fight against environmental crime and in enforcing liability for environmental damages. In their everyday work for the environment, prosecutors defend human rights, such as the right to life, health, respect for private and family life, decent working conditions and, last but not least, the rights of children

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