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"Green" legal interpretation in the light of a judgment of the Supreme Court**

Abstract

The author intends to analyse a good practice regarding the judicial interpretation of an environmental obligation, namely the obligation of fact-finding in connection with remediation. In order to introduce the full picture, the author draws up a doctrinal summary concerning the regulation of groundwater protection. He does not only present the Hungarian regulation, but also he mentions the legislative acts of the European Union. The article can be considered as a case analysis, nevertheless it also contains doctrinal questions and legal interpretation through one of the judgments of the Hungarian Supreme Court. After analysing the questions raised, the author formulates some proposals.

Keywords: groundwater, environmental protection, remediation, case analysis, the Supreme Court of Hungary

1. Introduction

Protecting and saving our environment is one of the most – if not the most – important issue of the 21st century.[1] Experts strive to find solutions in all areas of our life in order to reduce environmental pressures, and each academic discipline tries to serve the noble purpose of environmental protection with its own set of instruments. It is no different in the case of jurisprudence and in the case of legal practice as the central core of the reflection of jurisprudence. Legislation may respond to the progressively worsening environmental conditions with stricter and stricter regulative solutions; in the hands of 'the appliers of the law' there is the way of legal interpretation with the utmost and accentuated regard for environmental protection.

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[1] It was affirmed in the 24th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP24) between 2nd and 16th December 2018 by all accepted declarations.

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Nowadays the legal 'tool kit' of environmental protection is remarkably extended. If one harms or threatens the environment, not only the provisions of criminal, but also civil and administrative liability may be called for help in order to sanction the actor. The problem of managing environmental issues by legal instruments starts here. Excluding orders and licenses of administrative law, in most cases law 'meets' the environmental protection, when on the other side there is an actor who has *already* harmed or threatened the environment, that is to say, when the negative effects on the environment have *already* occurred, or at least its possibility has *already* arisen. That is the cause why I think of legislation and application of law as factors that are only able to play a subsidiary role in the serve of the environmental issue. Nevertheless it needs to be served primarily by innovative, sustainable and environmentally sound technologies. The key is not in the hands of social sciences, but rather of natural sciences. Although it does not mean that law cannot contribute to environmental protection: legislation shall create such a regulatory frame that prefers the above – mentioned innovative, sustainable and environmentally sound technologies, as well as for the application of law – including both administrative and judiciary application of law – legislation shall set up such a system of provisions, in which the general idea of environmental protection can be realised. The latter one is a wish or more exactly a requirement that I intend to introduce through a judgment of the Supreme Court – judgment no. Kfv.IV.37.043/2018/7. (hereinafter referred to as 'the judgment') –, in which one can discover that the judiciary application of law can contribute to the enhanced emphasizing of environmental aspects.

2. Doctrinal background of the protection of groundwaters

In the introduction I wrote about environmental protection as a general activity and endeavour, but the protection in practice can only be realised in connection with a special environmental element. Act LIII of 1995 on the general rules of environmental protection (hereinafter referred to as Environmental Protection Act) in its § 4 (1) determines the definition of environmental element: "ground, air, water[2], flora and fauna, human-built (artificial) environment, as well as their components." In legal doctrine the specific part of environmental law is built up along these elements more or less. The specific part means a system of coherent rules set up on the above-mentioned elements, as well as the relevant jurisprudential analyses. In the focus of the chosen judgment's statement of facts the protection of groundwater appears, hence I find it reasonable to give a little insight into the regulation of the topic.[3]

As Hungary has been a member state of the European Union since 2004, we can also distinguish two regulatory levels regarding the regulation of groundwater, which are in a close correlation with each other. Environmental protection – implicitly the protection of groundwater – is a shared competence between the Union and member states,[4] so thus the European Union has the chance to influence national regulation by its legislative acts. In connection with groundwater it means regulation by directives:

[2] See the two prominent monographs elaborating water law: Szilágyi 2018 and Szilágyi 2013.
[3] See in detail: Szilágyi 2019.
[4] Treaty on the Functioning of the European Union, Article 4 (2) (e).

the two most important ones are the directive establishing a framework for Community action in the field of water policy[5] and the directive on the protection of groundwater against pollution and deterioration.[6] The previous one determines the definition of groundwater: "all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil."[7] The first regulatory level is the level of the European Union, under which there is the Hungarian regulation as the second level that shall constitute a coherent system with the level above, since the implementation of directives into the national law is an obligation of member states.

Environmental Protection Act can be considered as the environmental code of the Hungarian regulation on the second regulatory level. Its § 18-21 include the protection of water. The protection does not only mean the protection of surface water, but also of groundwater,[8] under which the use of environment shall be organised and carried out in such a way as to achieve the environmental objectives concerning the status of waters, in particular the status of surface water and groundwater shall not be deteriorated, as well as the good status of surface water and groundwater shall be realised by meeting the requirements determined by specific laws.[9] Environmental Protection Act is complemented with a few provisions by Act LVII of 1995 on water management, which has a protective rule declaring that groundwater shall be used only to the extent that the balance of water abstraction[10] and water supply is maintained without loss of quality.[11] Although in the Hungarian environmental law regulation the specific legislative act of the issue is the Government Decree No. 219/2004. (VII.21.) on the protection of groundwaters, which – similarly to the Water Policy Directive – operates with a special definition: groundwater is "water located below the surface in the saturated zone of the geological formation (including, in particular, the pores and fractures of geological formations)."[12]

The objectives of the Government Decree are clear: the tasks, rights and obligations shall be defined related to ensuring and maintaining good groundwater status, progressively reducing and preventing pollution, sustainable use of water based on long-term protection of its exploitable reserves and remediation of the geological formation.[13] It is of the utmost importance that the reduction of pollution in this area is not presented in a subjective relation but objectively in the context of good groundwater status.[14] The protection of groundwaters has two aspects: there is a quantitative and a qualitative aspect.

[5] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (hereinafter referred to as Water Policy Directive).
[6] Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration.
[7] Water Policy Directive, Article (2) 2.
[8] Environmental Protection Act § 18 (1).
[9] Environmental Protection Act § 18 (5) a-b).
[10] On the liberalisation of groundwater abstraction see Szilágyi, Baranyai & Szűcs 2017.
[11] Act LVII of 1995 on water management § 15 (1).
[12] Government Decree § 3, 9.
[13] Government Decree § 1.
[14] Fodor 2014, 224.

The previous one means that it must be ensured that a given activity does not lead to exceeding the limit values of water use, it does not lead to the deterioration of the chemical and physical status of the body of groundwater and to the rise of harmful water levels. In terms of quality, protection is reflected in determining a set of requirements for each activity, with different licensing obligations at its core.[15]

The duality, namely the appearance of both quantitative and qualitative aspects next to each other, is also highlighted by the Water Policy Directive as the need to integrate quantitative and qualitative aspects increasedly for the protection of the environment in the cases of surface water and groundwater, with particular emphasis on the natural cycle of water.[16] The integrated management of groundwaters' quantitative and qualitative protection is necessary, since there is a physical bound between these: contaminating groundwater decreases the quantity of usable groundwater, and abstraction from groundwater may cause qualitative issues by facilitating the flow of pollutants[17] and through this the access of pollutants to other bodies of water.[18]

In connection with the protection of groundwater there are three different categories that need to be considered: areas of high sensitivity, of (normal) sensitivity and of less sensitivity. At the cores of both qualitative and quantitative protection there are the limit values by which the environmental authority shall carry out an authorization procedure or shall impose obligations in specific cases.[19]

Concerning legal consequences it is worth mentioning a few specialities. The detailed rules of fines in connection with the protection of groundwater are included in the above-mentioned Government Decree § 36-40, though – in my opinion – a remediation order is a much more efficient and progressive measure than fining. Remediation is such a rehabilitational measure that aims to mitigate the damage to the groundwater and the geological formation, to restore the site to its original state, as well as to ensure the service provided by the groundwater or to provide a service equivalent to the latter one. In particular it means the technical, economic and administrative activities necessary to recognise the threatened, polluted or damaged groundwater and geological formation, as well as to reduce, cease and monitor the degree of pollution, damage or risk.[20] Shortly it can be said that remediation means the elimination of occurred contamination and damage.[21] The Government Decree lays down a clear

[15] Bándi 2014, 453.
[16] Water Policy Directive, Preamble (34).
[17] In English-language geological literature it is called 'contamination plume': "A body of contaminated groundwater flowing from a specific source. The movement of the groundwater is influenced by such factors as local groundwater flow patterns, the character of the aquifer in which the groundwater is contained, and the density of contaminants."
http://www.dwa.gov.za/Groundwater/Groundwater_Dictionary/index.html?introduction_contamination_plume.htm [04.11.2019]
[18] J. Jakeman A et al 2016, 189.
[19] Lapsánszky 2013, 195.
[20] Government Decree § 3, 18.
[21] Fodor 2014, 225.

obligation that remediation is needed in the event of probable pollution or damage connected to a point source for the public interest.[22]

I keep it a much more progressive measure than the imposition of a fine, because in the case of environmental protection the primary aim is *in integrum restitutio*, namely the creation of such environmental state as the pollution or the damage would have not occurred. Fining has no direct influence on the rehabilitation of the environmental condition, it may only urge the polluter indirectly to act legally. Conversely, a remediation order (if executed) directly serves the interest of environmental protection.

Remediation consists of three stages, which can be repeated if needed.[23] These three stages are fact-finding, intervention and monitoring. Fact-finding may consist of an exploratory and an in-depth investigation; monitoring may occur after fact-finding and intervention, or paralelly to these.[24] Fact-finding is completed by the preparation of a final documentation, the acceptance of which will be decided by the water protection authority. The intervention is based on an intervention plan, upon completion of which a final documentation shall be also submitted. Monitoring means controlling and overseeing the effects of the activities carried out by the obliged in the first two phases.[25]

Regarding the obliged Government Decree declares that remediation shall be carried out by the person who is liable based on § 101-102/A of the Environmental Protection Act.[26] The referred section sets out the general basis of legal liability, stating that the user of the environment has criminal, civil and administrative liability for the environmental effects of his activities.[27] Subsequently, the Environmental Protection Act explains some of the sub-obligations relating to this liability, which I consider to be of an administrative law nature.[28] These sub-obligations include, for example, the obligation to provide information, of damage prevention, of damage elimination and of remediation, all of which have the ultimate purpose of ensuring *in integrum restitutio* in the case of environmental damage. The Environmental Protection Act also establishes a rebuttable presumption against the obligor of environmental liability, stating that, until proven otherwise, that owner and that user of the property in which the environment was damaged or threatened shall be liable for environmental damage and environmental threatening severally and jointly, who have been the owner and the user after the damage or threatening of environment occurred.[29] This provision does not only reveal a presumption, but also it declares that the owner and the user are jointly and severally liable until the owner designates the actual user of the property, and proves beyond doubt that he is not liable.[30] Several and joint liability serves as a

[22] Government Decree § 21 (1).
[23] Government Decree § 21 (5).
[24] Government Decree § 21 (4).
[25] Bándi 2014, 451.
[26] Government Decree § 21 (2).
[27] Environmental Protection Act § 101 (1).
[28] See Environmental Protection Act § 101 (2).
[29] Environmental Protection Act § 102 (1).
[30] Environmental Protection Act § 102 (2).

strengthened guarantee in order to ensure that each and every environmental damage have its own liable person and thus *in integrum restitutio* be achiveable.

Although it is important to emphasize that this provision is not a direct rule of liability, but such a form based on which the obligor shall be liable for activities causing environmental damage, if he does not do any activities causing environmental damage.[31]

Concerning the link between provisions of remediation and determining the obliged person, it can be said that the person is obliged for remediation who carries out the activity causing damage, or its successor; who takes over the liability for environmental damage by acquiring the right of ownership of the damaged property or otherwise; or who is liable based on § 101-102 of the Environmental Protection Act.[32]

It is worth mentioning a few more about the scope of exemptions under administrative liability, which is regulated in § 102/A (1) of the Environmental Protection Act. Listing these immediately highlights that we are talking about objective liability.[33] The first group includes when environmental damage or environmental threatening occurred as a result of armed conflicts, war, civil war, armed riot or natural disaster. The second group consists of cases when environmental damage or environmental threatening is caused by a direct consequence of enforcing a final administrative or judicial judgment.[34]

It can be seen that the regulation of environmental protection tends to create such a situation where one of the persons who is connected to environmental damage by any way shall perform the general requirement of *in integrum restitutio* and the obligation of remediation. In a few cases it can mean that the appliers of law interpret administrative law liability and relevant administrative law obligations in an exceptionally broad sense in order to ensure the rehabilitation of the state of environment above all, and thus it is considered a priority compared to evidences beyond reasonable doubt. I would like to present this in the context of a judgment of the Supreme Court discussed below, which is an example of a fair and law-abiding practice of using law as means of protecting the environment in times of the Earth's environmental crisis.[35]

3. The first administrative and judicial proceeding of the case

First, it is worth noting that the Supreme Court's judgment, that contains a judicial principle, was taken in a process of review. The claimant has challenged the first-instance judgment of the Labour and Administrative Court of Debrecen (hereinafter referred to as the Court of First Instance), which lawsuit was brought before the latter one because the claimant had challenged the decision of the National

[31] Csák 2012, 56.
[32] Bándi 2014, 454.
[33] Csapó 2015, 201.
[34] Environmental Protection Act § 102/A (1).
[35] Concerning the enforcement and interpretation of environmental law regulation we also have to consider the aspects of constitutional law. See the following publications in connection with the Hungarian Constitutional Court's interpretation of precautionary principle: Olajos 2019; Szilágyi 2018b; Szilágyi 2019b.

Inspectorate of Environmental Protection and Nature Conservation (the second-instance administrative authority). In the case the first-instance environmental administrative authority was the Government Office of Hajdú-Bihar County. In the core of the case there was an order of fact-finding, that is one part of the above-mentioned remediation. Laconically, it can be said that in the opinion of the claimant he was illegally obliged by the administrative authorities to carry out fact-finding. It is also worth noting that in the present case the statement of facts dates back to the early 2000s, and in some aspects even earlier, but the Supreme Court did not deliver its judgment until 2019. What I am only trying to point out is that environmental issues do not lose their importance over time in the aspect of that the legal question no longer exists, but on the contrary: after two decades, restoring the original state of the environment by legal means remains just as relevant as earlier, and the case shall not fall under 'limitation period' from the view of environmental protection.

In the present case, an analysis of the soil took place in connection with a complaint on the claimant's hot-dip galvanization plant on 18 January 2001. The soil samples were taken outside the fence of the plant, but directly from the soil of the trench running alongside it, which trench is owned by an individual and belongs to the arable land next to it. The results showed the fact of metal contamination, especially zinc contamination was significant. Hot-dip galvanizing produces a significant amount of hazardous zinc-containing liquid waste, which is deposited in concrete pools near the fence of the establishment.

According to the claimant, the establishment (the plant) was formerly owned by another person whose galvanizing activities may have caused environmental pollution, but the environmental assessment of the site purchased by the claimant in 1995 did not reveal significant environmental pollution. Into the trench for sampling, located 2-3 meters from the concrete pools, there has been continuously a drain-flow of rainwater from the plant since its functioning, which has allowed the direct discharge of any pollutants interflown with the rainwater. For that reason, the claimant was ordered to carry out a fact-finding investigation on the soil and groundwater contamination.

The claimant appealed against the order of fact-finding, which order was left upheld by the National Inspectorate. The plaintiff appealed against the decision of the latter one,[36] but both the court of first instance and of second instance also upheld the first-instance administrative order of fact-finding.

After exhausting all the remedies available to the claimant, a detailed environmental fact-finding plan was prepared and approved by the Inspectorate. The final documentation of fact-finding submitted later was also accepted, but the claimant was ordered to also submit a technical intervention plan. The claimant also appealed against the decision ordering the submission of a technical intervention plan, but it was ineffective and he was ordered to do so twice more.

Subsequently, on 30 October 2007 a conciliation meeting took place between the inspectorate and the claimant's representatives, about which the parties wrote meeting minutes. It is stated in the report that the claimant undertakes, in the context of the complex assessment of the detected and identified contaminants, to provide

[36] Below there is a reference to the judgment no. 6.K.30.383/2001/5. of the Court of Hajdú-Bihar County as *res iudicata*.

documentation of a site-specific quantitative risk assessment concerning human health and ecosystems, as well as environmental elements, and concerning the spatial and temporal prediction of the spreading and the behaviour of pollutants. It is also recorded in the meeting minutes that the claimant, by completing the documentation, does not acknowledge the responsibility for the pollution and does not undertake the obligation of remediation, as well as that the inspectorate will withdraw its decision on accepting the fact-finding and ordering technical intervention plan in 8 days, and will continue the procedure of remediation.

The final report of sampling and the human health risk assessment were submitted on 14 July 2008. The latter one, when investigating soil contamination, concluded that it is risky if the crops grown on contaminated soil are consumed, although in the case of using groundwater the highest measured pollutant concentrations do not mean greater risk than permissible. The risk assessment was submitted by one of the former owners of the establishment. A request for missing information was issued in connection with the final report of sampling, in which the company submitting the final report was asked to carry out a spatial (horizontal, vertical) delimitation of soil contamination in the adjacent arable land and to make further proposals for eliminating soil contamination. However, the company responded that he had not received an assignment from the former owner of the establishment to carry out these. The former owner of the establishment responded to the request for missing information that the delimitation of soil contamination has already been performed in the final documentation of fact-finding and its addendums, which has been accepted by the inspectorate; and both the final documentation of fact-finding and the risk assessment contain suggestions for eliminating the soil contamination. For all these reasons, the inspectorate was requested to dispense with the prescribed duties.

Subsequently, another meeting was held with the inspectorate, in which it was recorded in a reminder that the claimant would submit the documentation on delimitating soil contamination as a supplementary file and provide a declaration in order to clarify the ownership of the trench in the adjacent arable land and re-register the trench as non-agricultural in 8 days. A statement from the applicant was received on 24 March 2009 stating that the trench was not their property, so they could not initiate the procedure of re-registering the trench as non-agriculture.

Reacting to this, another request for missing information was issued, based on which the former owner of the establishment has to submit an achievable proposal for the interest of eliminating soil contamination, that is acceptable both from the aspect of soil protection and environmental protection. This supplementary file has not been submitted and no action has been taken to eliminate soil contamination.

4. The repeated administrative procedure of the case

Here the case enters a new phase. By its decision of 23 July 2015, the Government Office of Hajdú-Bihar County (hereinafter referred to as the first-instance authority) ordered the re-investigation of the contamination presented in the previously submitted final documentation of fact-finding and addendums. According to the first-instance authority's decision, it is necessary to repeat the fact-finding because the current concentration, extent and potential environmental and human health risks of

the pollution may have changed significantly since the previous fact-findin. It designated the claimant as the obligor of the decision.

The claimant appealed against the first-instance decision, primarily asking the annulment of the decision and the ordainment of the Government Office to carry out a new procedure, secondly asking the alteration of the decision so he is not to be held liable for the environmental damage.

On 14 October 2015, the National Food Chain Safety Authority issued an expert opinion that soil contamination (horizontal, vertical) shall be delimited from the point of view of soil protection, and a proposal shall be made to eliminate soil contamination and to protect the quality of soil. Based on the available documents, the expert authority has determined that the repeated procedure and the detailed fact-finding are justified from the point of view of soil protection.

By its decision of 13 January 2016, the National Inspectorate for Environmental Protection and Nature Conservation (hereinafter referred to as the second-instance authority), acting on the claimant's appeal, altered the first-instance decision so that the final documentation of fact-finding shall be submitted within a time limit of 10 months after the final and binding second-instance decision, furthermore it upheld the first-instance decision.

According to the standpoint of the second-instance authority, as opposed to the content of the appeal, the first-instance authority clarified the legally relevant circumstance that the pollution can be traced back to the claimant's activities at its establishment, so he did not prove of not being held liable. This was also justified by the expert opinion, which said that during the claimant's activity of hot-dip galvanization large quantities of hazardous liquid zinc-containing waste are generated and deposited in concrete pools adjacent to the fence of the property. Based on the final documentation and its addendum, the expert authority determined that the fact-finding had been carried out in five steps. In case of the soil, test results detected arsenic, cadmium, chromium, copper, molybdenum, lead, zinc, in some areas hydrocarbon contamination, and in case of the groundwater the results showed arsenic, nickel, selenium and zinc contamination above B limit values. The expert authority also stated that no risk assessment had been submitted in the areas affected by the pollution, i.e. no further investigations and no technical intervention had been carried out since. The spreading and current extent of contamination of groundwater is unclear. On the basis of the above, the second-instance authority concluded that the proceedings of the first-instance authority were in compliance with the legal provisions both from the point of view of substantial and procedurial norms.[37]

[37] Chapters 'The first administrative and judicial proceeding of the case' and 'The repeated administrative procedure of the case' are an abstract of the judgment no. 11.K.27.275/2016/32. of the Administrative and Labour Court of Debrecen.

5. The first-instance judicial proceeding of the case[38]

The claimant filed a lawsuit against the decision of the National Inspectorate for Environmental Protection and Nature Conservation, so the latter one was placed in a position of a defendant during the judicial proceedings.

The claimant's arguments were the following: (a) The defendant administrative authority violated § 102 of the Environmental Protection Act, as well as § 21(2) of the Government Decree. (b) He stated that his activities could not have caused the revealed contamination, since such contaminants as arsenic, nickel, selenium, lead and aliphatic hydrocarbons were also detected that could not be derived from his activities at all, but clearly can be traced back to the activities of the former owner of the establishment. The defendant based this assertion on a mere assumption. (c) He referred to the fact that the first-instance authority had been 'silent' on the case from mid-2008 to 2 February 2015, and this omission could have led to the inability to assess the detailed final documentation of fact-finding submitted.

As opposed to this, the defendant administrative authority explicated the following in its answer: (a) The way the claimant carried out its investigation in 1996 supports the fact that the claimant's allegation is unfounded and questionable. At that time, the tests were conducted because the claimant sought to obtain an environmental licence for the hot-dip galvanizing activities he intended to carry out in the area. The environmental authority accepted the documentation, in regard to the results of the investigation. (b) By contrast, in 2001, the claimant, in the light of his full knowledge of the official sampling results, made a declaration that the former owner of the establishment had caused the pollution in the area. (c) Based on the documents available since 1996, the claimant has not, during the last 15 to 20 years, provided any new and credible evidence to the defendant and the environmental authority that is capable of confuting the ascertainment of the defendant beyond doubt in the question of liability in accordance with § 102 of the Environmental Protection Act.

At first instance, the claimant's action was unfounded. According to the court of first instance, the results of the 1996 investigation did not show any contamination, but the results of 2001 did. This proves that the pollution originated from the claimant. In its judgment no. 6.K.30.383/2001/5., the Court of Hajdú-Bihar County had already dropped the case on 5 March 2002 in this regard. According to this, the environmental pollution occurred that was argued neither by the claimant. Among the pollutants there is zinc contamination associated with the claimant's hot-dip galvanizing activity, both in the soil and in the groundwater. The judgment stated that the zinc contamination was undoubtedly linked to the claimant's activities.

The court of first instance considered it appropriate to extend the area of contamination to be explored compared to the 2001 obligation. The property affected by the zinc contamination, which has been in use by the claimant since 1998, is precisely in the ring of the properties in respect of which the applicant declared in 1996 that it was free of pollution. In the court's view, the authority decided in accordance with the law when it ordered for the claimant to repeat the detailed fact-finding phase

[38] This chapter includes points [4], [5], [6] and [8] of the judgment, in some cases with small changes.

of the remediation, as the claimant had not proved the absence of its liability beyond doubt under § 102 of the Environmental Protection Act in connection with the pollution of the hot-dip galvanizing establishment because of the absence of the final documentation of fact-finding accepted by the authority.

6. The proceeding before the Supreme Court[39]

In the case the claimaint filed a request to the Supreme Court for reviewing of the judgment of the court of first instance and for revoking the defendant's decision. The Supreme Court had to rule on the question of whether the claimant was legally obliged to make a detailed fact-finding within the framework of remediation. The claimant based its arguments on the following: (a) It has not been proved that all the pollution can be linked to his activities. He argued that the judgment of the Court of Hajdú-Bihar County would have referred to this, since it stated that only the zinc pollution can be related to the claimant's activity. However, in addition to the zinc component, the defendant also ordered the delimitation of contamination for the cadmium, chromium, copper, nickel and lead components, which are contained in the final documentation of fact-finding submitted by the claimant. (b) During the environmental licensing procedure the claimant has demonstrated and verified that the materials used in or derived from the technology used on the establishment are not contaminants of cadmium, chromium, copper, nickel, and lead, and therefore there is no legal basis to order for the claimant to investigate these contaminants.

In the Supreme Court's view, the claimant's request for review was unfounded. Underpinning this, the Supreme Court referred to § 101(1) and (2)c of the Environmental Protection Act as the general basis for legal liability and obligations of the 'user' of the environment, as well as to § 102(1) as the presumption of liability in connection with the environmental damage. It also referred to that the obligant of remediation is who is liable according to § 101-102/A of Environmental Protection Act, as well as that provision of the Government Decree which declares that the environmental authority shall decide on the assessment of the final documentation and on any additional duties related to the pollution or the damage taking into account the final documentation of fact-finding. The latter may include ordering the continuation of the fact-finding or establishing the need for intervention.

It has been proved in the course of the proceedings that the claimant avails the environment, and the fact that there was no clear exemption and no other person was and can be held liable. The judgment of the Court of Hajdú-Bihar County is *res iudicata* in that at least the zinc contamination is attributable to the claimant's activity, while the liability of the former owner of the establishment was not unquestionably proved and the 1996 investigation declared it neither. The contamination was detectable in 2001, at the time of the claimant's ownership. The relationship between the pollution and the activity carried out cannot be excluded in the absence of an exemption. The provisions of law regulates this well-founded assumption as the basis for the obligation of fact-finding. Therefore, the obligation cannot be considered to be unlawful.

[39] This chapter includes points [9], [10], [13]-[17], [22] and [24] of the judgment.

According to the Supreme Court, the claimant can be lawfully obliged to carry out fact-finding in connection with zinc contamination because of the *res iudicata* (see the 2002 judgment of the Court of Hajdú-Bihar County), in connection with other pollutants because of the presumption of the Environmental Protection Act and the absence of exemption. The judgment of the Supreme Court consisting of a principled content is as follows: if the liability for the threatening of the environment cannot be clearly established, the obligations of the user of the environment are primarily determined by the legal regulations. In the absence of an exemption, the legislation presumes that this activity of the environmental user is potentially harmful. The fact-finding serves, among others, the purpose of clearly determining the origin (cause or causer) of the polluting effect.

7. Conclusion

Regarding the conclusion it is worth to make a distinction between pollutants. As it can be ascertainable from the facts, the claimant's zinc contamination was established, so concerning that no question arises. However, for the other pollutants (cadmium, chromium, copper, nickel, lead) a judicial interpretation was needed, in this case an extending interpretation of the law. Although the Government Decree declares that the obligant of the remediation is who is liable according to § 101-102/A of Environmental Protection Act, synthetising these provisions with the judgment of the Supreme Court it can be stated that the claimant can be obliged to carry out remediation, within this fact-finding, because not only the zinc contamination, but also contamination from other pollutants occurred due to the activity of the claimant. I mentioned the extending interpretation of the law because it was proved that the claimant's property was the subject of an environmental-damaging activity as zinc components flew into the soil and groundwater, but it was not proved that the other pollutants also came from that property. The welcome extension, in my view, can be revealed that only the property owner or property user is liable whose property has been subjected to environmental-damaging activity, although in this case it is proved beyond doubt only for the environmental damage caused by zinc, but not by other pollutants. At the same time, it is important to point out that, in some cases, an extended interpretation of obligations and responsibilities is justified in the field of environmental protection, since 'the arms of law enforcement' are bound to prove certain causal and thus liability-based correlations. In my opinion, the judgment of the Supreme Court, which contains a principled content, is extremely forward-looking as to how law enforcement can serve the interests of the environment more effectively. However, it is imperative to consider shorter deadlines in environmental matters and not to let the issue of an obligation delay for two decades. Finally, I think it is worthwhile to set a long-term, somewhat utopian, goal for environmental law enforcement. It may be worth considering – especially due to the increasing environmental problems – the introduction of special environmental councils in the courts. Its whole spirit, not just one judgment, would be overridden by the primacy of environmental interests, which I have tried to illustrate in the case analysed above. This would increase the contribution of law to environmental objectives and the realisation of environmental protection as a general ideal.

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