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THE RED SLUDGE DISASTER AND THE ENVIRONMENTAL ACTIVITIES OF THE PROSECUTION SERVICE

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Theme II : Investigating and prosecuting
environmental crimes: How to
overcome obstacles and ensure an
effective role for prosecutors?

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The red sludge disaster and the environmental activities of the Prosecution Service

The most significant environmental crime in Hungary in recent years was the so-called red sludge disaster.

Due to the introduction and use of unauthorised and deviating technologies and the neglect of control obligations at the site of an aluminium production company (MAL Zrt.), the wall of a red sludge reservoir, which is a by-product from the production process, burst on 4 October 2010, releasing 3.45 million cubic metres of water mixed with red sludge.

The caustic substance, which is harmful to health, flooded two municipalities, killing eight people, injuring 227 people to varying degrees and causing millions of euros worth of damage to buildings and utilities.

The dangerous substance damaged or destroyed a huge area, the habitat or species of countless animals and plants, and the spill would have reached river Danube if not for the rapid response. In some places, half a metre thick red mud had to be removed from the contaminated areas.

The investigation in the criminal case was conducted under the special supervision of the Prosecution Service. In addition to checking the investigation file, the investigating authority was briefed on a weekly basis and the necessary investigative measures were determined. The complex crime was indicted a year after it had been committed, but the court proceedings were only finally concluded in December 2019. 10 managers and employees of MAL Zrt. were found liable for the felonies of public endangerment and violation of the waste management regulations and the manager of the company was sentenced to four years' imprisonment.

Similarly to the criminal law branch, the public law branch of the Prosecution Service continuously monitored and evaluated the events from a prosecutorial perspective.

The environmental authority also imposed an environmental fine of **€ 24 million** on MAL Zrt. This was the highest environmental fine ever imposed by the Hungarian environmental authorities. In the event that the Prosecution Service had found a violation of the law during the administrative procedure, it could have issued a reminder against the administrative decision. However, this did not happen as there was no breach of the law in the case.

Under the Fundamental Law of Hungary, the Hungarian Prosecution Service performs prosecutorial functions in criminal and non-criminal matters. Traditionally, the main activity of the Prosecution Service is to perform criminal law tasks and, as a public prosecutor, to enforce the state's demand for punishment. However, the public law branch of the Prosecution Service, as the protector of public interest, exercises *inter alia* environmental protection duties and powers, as well, as defined by the Fundamental Law and other legal acts.

Although in the public mind it is the classic criminal law activity of the Prosecution Service, which is the first to emerge, prosecutors' powers to protect the public interest are equally important in the field of the protection of the environment; it would be less effective if the Prosecution Service had only criminal law tools at its disposal, since criminal law is the *ultima ratio* and not always more effective than other measures.

The cross-disciplinary nature of environmental protection therefore requires prosecutors to go beyond the traditional approach. In the activities of the environmental prosecutor, special importance should be attached to the cooperation between the different branches, and the

mutual transfer of information, data and documents should be carried out in a continuous and timely manner.

Environmental **criminal law** activity is based on the provisions of the Criminal Procedure Code. The work of prosecutors is in no way different from the prosecution of any other criminal offence, but a basic knowledge of the complex legal framework is particularly important.

The main task of **public law** activity is to ensure that the procedures and decisions of environmental authorities are in line with the law. In case of endangering or damaging an environmental asset or a natural asset and site, prosecutors are also entitled to file a public interest lawsuit with the civil court seeking an injunction prohibiting the activity or compensation for the damage caused by the activity, using the private law system.

Let me make a few suggestions based on the Hungarian experience in the context of the prosecutorial activities related to environmental protection:

1. It is important that there is a legal framework for the parallel prosecution of legal person(s) and natural person(s) in the investigation of environmental crimes, and that this possibility is implemented.
2. It is also important that the legal environment allows for the establishment of criminal liability of top management in the event of serious pollution offences, and that we make use of this possibility in our daily work.
3. Criminal liability should also be established for minor negligence, as well.
4. It is important to take into account other offences (e.g. public endangerment) when investigating environmental crimes, as they may ultimately lead to the establishment of criminal liability.
5. One must take care to ensure that expert opinions and expert evidence do not impede prosecution, but on the contrary, they should help to conclude criminal proceedings as quickly as possible.
6. In criminal cases where this is deemed appropriate, the criminal and public interest protection branches should cooperate.



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