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AN ADMINISTRATIVE LAW ANALYSIS OF CLIMATE LITIGATION IN THE HUNGARIAN LEGAL SYSTEM—WITH A EUROPEAN PERSPECTIVE

THESES OF THE DISSERTATION

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Content

1. Subject-matter. Objectives of the research

In the summer of 2016, Luc Lavrysen, President of the European Union ("EU") Forum of Judges for the Environment,[1] asked me to give a presentation on the latest developments in environmental case law at the 9th Task Force meeting of the Aarhus Convention,[2] in particular to discuss the "Urgenda" case. I had read the previous summer's judgment[3] of the District Court of the Hague, ordering the Dutch State to reduce, within five years, its greenhouse gas ("GHG") emissions by at least 25% (as compared to 1990 levels), with utter dismay. At the time, it was not known whether this first instance court's judgment would be upheld by the Court of Appeal, nor whether it would be the first and only climate judgment, or whether other such cases in Europe would follow. The latter has come to pass.

The Urgenda judgment was upheld by the Court of Appeal a few years later, and was then affirmed by the Dutch Supreme Court.[4] Climate protection cases have since been brought in other European countries, as well, developing into a whole new branch of law that has fundamentally redefined the principles of separation of powers and standing, as well as the system of proof.

I have been following developments in the European climate litigation since this time, in terms of who is bringing lawsuits, in which areas, what claims are brought, and what challenges climate judges are faced with, and have been studying how these challenges are met in national courts, the Court of Justice of the European Union ("CJEU"), and various human rights fora.

The choice of my research area is (painfully) relevant for another reason, as well: today, we are increasingly affected by the consequences of changes in the environment. One of the most

[1] European Union Forum of Judges for the Environment, EUFJE
[2] UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted in Aarhus on 25 June 1998
[3] The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Stichting Urgenda: Rechtbank Den Haag C/09/456689/HA ZA 13-1396, 24 June 2015.
[4] The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Stichting Urgenda: Gerechtshof Den Haag 200.178.245/01, 9 October 2018.
The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Stichting Urgenda: Hoge Raad 19/00135, 20 December 2019.

significant of these changes is undoubtedly climate change. According to the Sixth Report of the Intergovernmental Panel on Climate Change[5] 2022,[6] it is undeniable that human impacts on the climate have warmed our atmosphere, water, and land. This has far-reaching and rapid consequences for the atmosphere, oceans, cryosphere, and biosphere. The report pointed out that human-induced climate change is already affecting many weather and climate extremes in all regions of the world. There is growing evidence of observed changes in extreme weather events such as heat waves, heavy precipitation, droughts, and tropical cyclones. Global surface temperatures are projected to continue rising until at least mid-century. During the 21st century, global warming will exceed 1.5-2°C unless emissions of carbon dioxide and other GHG fall significantly in the coming decades. From a scientific point of view, limiting anthropogenic global warming to a certain level requires limiting carbon dioxide emissions, while at the same time achieving at least net zero carbon dioxide emissions, together with strong reductions in emissions of other GHGs.

These were the two main reasons that mainly determined the subject-matter I chose to research. Initially, I followed European climate litigation, attending the growing number of conferences on the subject. Later, I focused on the questions of when and what kind of climate litigation could be expected in Hungary, including looking at the types of plaintiffs and defendants that could be involved in such lawsuits. As an administrative judge, I was most concerned with the possibilities offered by Act I of 2017 on the Hungarian Code on Administrative Procedure ("**CAP**"). Bearing in mind that the CAP is a relatively new piece of legislation, as it came into force on 1 January 2018 interpretation of its provisions is still subject to jurisprudence. Further, the CAP introduced a new legal instrument that could be used in Hungary to initiate systemic mitigation lawsuits for climate protection.

The aim of my research was twofold: first, to map the general characteristics, history, and possible future directions of climate litigation while examining administrative issues emblematic of European climate judgments. Second, my aim was to investigate the shape climate litigation would likely take in the Hungarian administrative litigation context, both in terms of legislation and law enforcement. As a judge, I believe it is essential that, by learning from other countries in Europe, courts can prepare for these lawsuits prior to them being brought in our domestic courts.

2. Structure of the dissertation

The first part of this dissertation gives an introduction to the general positioning of climate litigation, examining the concept, history, present, and future of climate litigation, covering not only European litigation and litigation history, but also the lessons learned from climate litigation around the world. In fact, there are areas of research in which it is impossible to separate oneself from the rest of the world, given that international trends and events have

[5] The Intergovernmental Panel on Climate Change is an independent body established under the auspices of the World Meteorological Organization and the United Nations Environment Programme to assess scientific literature and provide vital scientific information on climate change.
[6] IPCC, 2022, https://www.ipcc.ch/report/ar6/wg3/

determined and are continuing to determine European events—and the dynamics of the development of European climate litigation.

I address the specificities of European administrative litigation in the second section, focusing on the similarities of litigation across the EU and, above all, the judgments delivered by the courts of the various countries. I concentrated on the uniformity of any issues that can be observed in each case, their differences, and to what extent the decisions are influenced by international conventions—both those relating to climate protection and those relating to the protection of human rights, particularly the European Convention of Human Rights. I have focused on the most important European judgments, both since I believe they have fundamentally determined the future of European climate litigation, and also as they are the cases that have been decided finally by the courts and are legally binding. In addition to the decisions of national EU courts, I have also examined the climate decisions of the CJEU, focusing only on the question of legal standing, given that the claims were not examined on the merits because the EU courts found that the plaintiffs lacked legal standing. To date, no climate cases have been decided by the European Court of Human Rights, although there are more than ten such cases pending before it, I have examined the essentially procedural issues raised in these cases. The second part of this section examines two issues from European climate litigation that have been central to these cases: the principle of separation of powers, and the conditions for bringing an action. The choice and elaboration of these two topics focuses specifically on administrative litigation.

This dissertation also examines the Hungarian legal system, specifically the possibilities of bringing lawsuits for the protection of the climate in the context of the Hungarian legal framework. It is essential to note that the part of my research concerning the Hungarian legal system in the context of climate litigation addresses solely administrative law, within which I examined three areas in detail: first, the possibilities offered by actions for annulment; second, the status of environmental plans, which are significant in environmental law; and finally, the possibility of systemic mitigation actions in the context of a failure to act. I found that among the legal institutions newly created by the CAP, failure to act may be the most suitable basis to pursue systemic mitigation actions. I have supplemented my research in all three areas with examples from case law.

A crucial factor, and one that made the research even more unique (and complex), was that climate litigation is not constant, but changes almost day-to-day. Indeed, new climate judgments are delivered constantly, continuing somewhat the ideas that may have been abandoned in a previous case, and solving new problems. The European scene will be fundamentally changed once the first (substantive) climate judgment is made by the European Court of Human Rights. Furthermore, the situation in Hungary will be affected once the Constitutional Court carries out the normative review of the Climate Change Act. I have tried to keep my research up to date, but under such circumstances this is an impossible objective. The ever-evolving nature of climate litigation, however, adds an interesting element to adjudications: there is unprecedented cooperation between European courts, and in many court cases the judgments reflect each other. The reason for this is obvious: on the one hand, the great

influence of international conventions on environmental law, and particularly on climate law, and on the other hand, the dynamic development of this new area of law and the need to rethink and re-evaluate traditional principles.

3. Description of the methods used in the research

Taking into account that the research was divided into three major parts—the history, development and characteristics of climate litigation; the presentation and analysis of two main areas in European climate litigation; and climate litigation in the context of Hungarian administrative law—I applied various methods in the research.

To research the development and evolution of climate litigation, studying history was my dominant approach. This part of the research was important because identifying the origins of climate litigation and tracing its evolution is essential to understanding current trends and how these fit in the Hungarian legal context, and also for analysing the extent to which the purpose, role, and desired outcomes of climate litigation have changed over the years. The recognition of climate change as a super-wicked problem has driven some actors into the courtroom, and this has played a fundamental role in changing the characteristics of climate litigation.

In the second part of the research, I applied the legal comparison method by presenting European climate judgments from three important legal perspectives (the principle of separation of powers, the conditions for initiating an action, and the human rights aspect) and the analysis of the courts' answers. The aim of my research in this area was to find out whether there are similar problems and issues that arise in each case, and, if so, what they are, and what answers are provided, what is considered, and how much weight is given to them by the judges of the courts hearing climate law cases. In addition to the two issues examined by the research, there are of course other issues, such as the question of evidence, but this raises both scientific issues and detailed and exhaustive literature on the subject; my research did not, therefore, address this issue in detail.[7] I carried out a legal-dogmatic analysis of the separation of powers and the conditions for initiating an action, then analysed the reasoning of the selected judgments and orders, and compared them. I also examined the findings concerning the conditions for initiating an action in the light of the Aarhus Convention.

As far as this part of my research is concerned, it should be noted that while some of the decisions are available in official English translations, others are only available in unofficial—

[7] On evidence, see for example PEEL, JACQUELINE: Issues in Climate Change Litigation. *Carbon & Climate Law Review*, 2021/5(1). sz. 15–24. OSOFSKY, HARI M.: Is Climate Change „International"? Litigation's Diagonal Regulatory Role. *Virginia Journal of International Law*. 2009/49/3. 585-590.; SULYOK KATALIN: A klímaperek kihívásai és sikerei – az Urgenda ítélet tanulságai. (The challanges and successes of climate litigation – the experiences of the Urgenda case.) *Közjogi szemle*. 2020/1. 1-7.; SULYOK KATALIN: *A természettudomány szerepe a bírói érvelésben, A nemzetközi bíróságok gyakorlata környezeti jogvitákban. (Science and judicial reasoning. The practice of international courts in environmental litigation.)* Budapest, ELTE Eötvös Kiadó, 2022. Második rész, III. fejezet; SULYOK KATALIN: Klímaperek trendjei nemzeti bíróságok és a nemzetközi bírói fórumok gyakorlatában. (The trends of practice in climate litigation of national and international fora.) See https://socialreflection.org/wp-content/uploads/2022/12/Sulyok-Katalin-Kl%C3%ADmaperek-trendjei-nemzeti-b%C3%ADr%C3%B3s%C3%A1gok-%C3%A9s-a-nemzetk%C3%B6zi-b%C3%ADr%C3%B3i-f%C3%B3rumok-gyakorlat%C3%A1ban.pdf

but high-quality—translations. I did not aim to review entire litigation files, nor all the statements and arguments of the parties. It would not have been possible to do so, in any case, as I did not have access to the case files, only to the decisions and to the court documents available on the website www.climatecasechart.com. Further, my research did not focus on the parties' statements, but rather on the courts' decisions. In cases where there were decisions of more instances, all decisions were examined and analysed in the research.

As climate litigation is currently the clear leader in international litigation, especially in environmental litigation, there is significant secondary literature on climate litigation. I also analysed this during my research. For each of the cases discussed, I tried to find the relevant national secondary literature, as it obviously provides the best insight into the decision in question, especially from a procedural perspective. However, I also looked at comparative literature.

In presenting the cases, I have used data from the Sabin Center For Climate Change Law, an up-to-date website maintained by Columbia Law School (Columbia Climate School), as the main part of the research.[8] This website contains two databases of climate change cases: the global database contains all cases outside the United States, while the other database contains all climate litigation from within the U.S. The significance of the website is that for many cases, not only the judgments but also the most important documents relating to each case are available, and the available data are provided by the countries themselves. Therefore, in my opinion it can be considered authoritative. In my research I have also used reports published by international organisations, mainly the United Nations Environment Programme, but also other NGO research (e.g. Centre for Climate Change Economics and Policy, Grantham Research Institute on Climate Change and the Environment, etc.).

In the third part of the research, which concerns the Hungarian legal system, I first studied the Hungarian legal context on failure to act procedures, then the case of *Notre Affaire à Tous et al. v. France*, which was heard by a French court in a failure to act procedure, and finally examined whether this case could be replicated under Hungarian law, using a comparative method. During this third part of my research, I used comparative legal method. I examined what kind of climate litigation could be appropriate under Hungarian law in the framework of administrative procedural law, and finally I looked at the possibilities offered by lawsuits for failure to act. I studied the CAP and all procedural and substantive laws that might be relevant to the issue at stake. I also examined Hungarian case-law through the collection of court decisions available on birosag.hu.[9] In summary, the third part of my research, which reviews the particularities of Hungarian administrative law in the context of climate litigation, was based on an overview of the Hungarian legal system, and on modelling a possible systemic mitigation omission lawsuit.

4. Summary of research results

[8] climatecasechart.com
[9] https://birosag.hu/ugyfeleknek/birosagi-hatarozatok-gyujtemenye

4.1. Research findings from the European climate lawsuits

1. *The number of climate change lawsuits is growing, with one issue resolved giving rise to another*

A review of the history of climate litigation shows that the number of cases brought before EU courts is growing, and has doubled since 2015. A little more than 800 cases were filed between 1986 and 2004, and by 2021 more than 1,000 cases were brought to court.[10] In the Sabin Center's climate litigation database, as of 31 December 2022, there were 2,180 climate cases from 65 jurisdictions, international and regional courts, and quasi-judicial bodies.

2. *Litigation is increasingly becoming strategic*

While in early lawsuits, plaintiffs acted in their own interests, in recent years the focus has shifted to strategic litigation aimed at bringing about broader social change. Further, most climate lawsuits seek to hold governments accountable for their failure to act, or for their lack of ambition.

3. *Plaintiffs do not act alone—they are grouped in communities of interest that are based on age (e.g., young people or women of advanced age) or residence (e.g., Dutch citizens or Peruvians)*

In some of the cases I examined (such as the *Urgenda* and *Klimaatzaak* cases), the NGO plaintiffs were joined by natural person plaintiffs. Moreover, in the *Klimaatzaak* case, the number of natural person plaintiffs exceeded 58,000. In the Irish climate lawsuit, only one NGO plaintiff was involved, but this is presumably due to the extremely high cost of litigation in Ireland. In the Swiss climate case, the plaintiffs were senior women[11] while in the *Neubauer*[12] or *Duarte Agosthino* cases, young people were involved as plaintiffs.

4. *There is a shift in the distribution of power, with no clear boundaries between the different branches of power*

Climate litigation shows that the sharp boundaries between the different branches of power are becoming blurred. Consequently, judges are forced to play a more active role in these lawsuits. Some welcome this, arguing that ruling in favour of the plaintiffs in systemic mitigation lawsuits reinforces the working system of separation of powers, because, in their view, the legislature and the (supreme) court(s) are "partners in the legal enterprise".[13] They stress that as long as a democratic majority is unable to enact effective climate change legislation,

[10] https://fsr.eui.eu/event/climate-change-litigation-in-numbers/
[11] Swiss Federal Supreme Court 1C_37/2019 05.05.2020.
[12] Neubauer et al. v Germany, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20 - Germany; Duarte Agostinho et al. v Portugal and 32 other States before the ECtHR (lodged on 7 September 2020, application no. 39371/20)
[13] VRANKEN: Toeval of beleid? Over rechtsvorming door hoogste rechters. *Nederlands Juristenblad.* 2000/75. 1-5.

fundamental rights— which are essential to the protection of democracy— can create a legitimate space for judges to provide climate change remedies.[14] Others, on the other hand, argue that the judiciary should not be allowed to get involved in the highly complex area of science-based government policymaking. It is doubtful whether such judgments are legitimate and whether decisions are well-founded. It is argued that the courtroom is not the appropriate place to discuss climate science as well as the public interest.

5. *Cooperation between judges is more active in climate litigation*

A close cooperation between judges can be observed in environmental law,[15] which I believe can be a consequence of the fact that a substantial part of national environmental legislation is EU-based, so judges face similar challenges during adjudication, due to the shared framework of EU law. An even closer cooperation observed in climate litigation is, in my view, due to several factors: first, the shift in the current system of powers has forced judges into a new, more active role, in which they have been confronted at the same time with a completely new strategic problem. Another reason may be that the legal background is the same in these cases, with all the courts involved in climate litigation, whether civil or administrative, applying the same international conventions (United Nations Framework Convention on Climate Change, Paris Agreement, European Convention on Human Rights, Aarhus Convention, and European Climate Action, to mention only the most important ones).

4.2. Research findings about the Hungarian climate litigation environment

1. *Experience from European climate lawsuits may be relevant to a Hungarian systemic mitigation lawsuit*

A future lawsuit involving Hungarian climate protection issues will include issues identical to those already decided by courts hearing European climate cases (e.g. the principle of separation of powers, interpretation of applicable international treaties and the relevance of the practices of international judicial bodies). In this context, we can learn from the judgments of courts that acted previously, examining the criteria they considered and the arguments they accepted and rejected.

2. *The CAP provides for a legal institution capable of initiating a systemic mitigation lawsuit*

All but one of the European climate lawsuits examined in this thesis were heard by civil courts. However, my research project and hence this thesis focused on the legal institutions of administrative law and examined the possibility of conducting a systemic mitigation lawsuit in

[14] BURGERS, LAURA: Should judges Make Climate Change Law? *Transnational Environmental Law*, 2020/9(1). sz. 55-75.

[15] An example is the European Forum of Environmental Judges, established in 2004, which aims to promote better implementation and enforcement of national, European and international environmental law by contributing to the development of judges' knowledge of environmental law through the exchange of case law and by sharing experience in the training of judges in environmental law.

compliance with the CAP. The CAP makes a distinction between several types of action,[16] of which the action for failure to act seems to be suitable for examining whether the Government has taken appropriate measures to effectively address climate change by meeting its GHG obligations under the Climate Act[17] and the National Energy and Climate Plan.

3. *Lack of use of the legal institution of action for failure to act*

Current practices and statistical data have clearly shown that the wide-ranging possibilities offered by actions for failure to act have not been exploited yet. Plaintiffs tend to resort to well-established practices, such as an action for annulment, or bring actions for personality against the Government's failure to act, as was found in the two cases examined in the thesis.

4. *Plaintiffs file actions for failure to act to remedy a failure to act in the administrative procedure.*

The cases and statistical data reviewed have also revealed that plaintiffs currently file actions for failure to act against government agencies' failure to act in an administrative case and opt out bringing an action for failure to act against all administrative acts of government agencies laid down in CAP Section 4 (3).

5. *With regard to the right of Prosecutor's Offices to file actions for failure to act, the CAP and Act CLXIII of 2011 on Prosecutor's Offices (hereinafter: POA) are in conflict.*

This research project has revealed several legislative anomalies in the Hungarian legal system. The first and most noticeable is that CAP Section 128(1)b) and POA Section 29(1)–(5) regulate the right of Prosecutor's Offices to file an action differently.

A look at POA Section 29(1)–(5) alone reveals that prosecutors exercise their power of judicial review subject to administrative decisions and official measures, since the POA explicitly provides for the review of the legality of individual final, definitive or enforceable decisions and official measures that have not been reviewed by the court, offering the right to challenge the decision before an administrative court in this respect. By contrast, an action for failure to act is a special administrative dispute which does not seek to review an administrative decision or an official measure, but to remedy an unlawful situation resulting from failure to comply with the obligation to carry out an administrative act. The right of prosecutors to bring an action for failure to act is not granted by the POA, but only by CAP Chapter XXII. POA Chapter IV.8 (Section 29), which contains provisions on "Prosecutor's tasks related to certain official procedures and institutions", only provides for the review of official decisions and measures for legality, but does not mention the cases and conditions of prosecutorial action against failure to act by government agencies.

[16] CAP Section 38(1), CAP Chapters XXIV and XXV
[17] Act XLIV of 2020 on climate protection

This leads to two possible conclusions. One is that the legislator did not ensure the compatibility of POA Section 29 and the provisions of CAP on actions for failure to act. This is of particular concern because CAP Section 128(1)b), which requires prosecutors to file actions for failure to act, mentions the missing of the deadline set in the notice. However, the rules of prosecutors' notice are not included in the CAP, but only in respect of actions for failure to act, but for actions for annulment. In other words, the legislator failed to align the POA with the CAP on this point, because the CAP does not settle prosecutors' notice regarding actions for failure to act and the procedure to be followed in the case of failure to comply. The other possible conclusion is that the POA does not authorise prosecutors to examine omissions or issue the corresponding notices. Only the CAP authorises them to file actions for failure to act. But then how should we interpret (with reference to what law) CAP Section 128(1)b) ("when the due date specified in the notice has elapsed without success"), if neither the notice nor its rules are regulated by the CAP? Both of these conclusions point to a legislative gap.

6. *The right of NGOs to file an action laid down in CAP Section 17d) is in conflict with Section 98(1) of Act III of 1995 on the general rules of environmental protection (hereinafter: EPA).*

CAP Section 17d), which specifies the scope of persons entitled to file an action, refers to a set of matters laid down by Acts of Parliament or government decrees where NGOs have the right to file an action. In this context, EPA Section 98(1) and (1a), which declare the client status in environmental procedures, may be taken into account in environmental matters. While EPA Section 98(1) does not prescribe any time limit for conducting the given administrative activity in order to accept client status, CAP Section 17d) requires one year of operation for the right to file an action.

7. *Definition of the official procedure of environmental authorities and the relationship between EPA Section 98(1a) and EPA Section 66.*

EPA Section 98(1a) defines the term environmental administrative procedures, but the list is not exhaustive. Specifically, for the purposes of EPA Section 98(1), the procedures specified in Sections 66(1) and 66/A(1) are considered as environmental administrative procedures.

EPA Section 66(1) encompasses the environmental authorisation procedure, the standard authorisation procedure for the use of the environment, the environmental operation authorisation procedure, the integrated authorisation procedure for the use of the environment, the procedure preceding the decision issued by the environmental protection authority, or, if the latter participates as a competent authority, the opinion issued by another authority, and the preliminary examination procedure. While this provision can be interpreted in the light of EPA Section 98(1), by which environmental organisations in these procedures definitely have client status, this is not true of EPA Section 66/A(1). Specifically, in an environmental administrative procedure for the authorisation of any activity that involves the use of the environment, the enforcement of environmental protection criteria must be examined as part of a competent authority's involvement or as a speciality matter.

In my view, this provision is not clear as to the official procedure of public administration in which environmental organisations may be regarded as clients. The legislator presumably thought that environmental organisations generally have client status in environmental administrative procedures for the authorisation of any activity involving the use of the environment. If that is the case, it is fair to ask what constitutes a procedure for the authorisation of any activity involving the use of the environment. In this respect, a narrow and a broad approach is possible, especially in consideration of EPA Section 2.9, which defines the term *use of the environment*. Specifically, the use of the environment is any activity involving the use or load of environment or any of its elements. In the narrow sense, an official procedure for the authorisation of the use of the environment only covers activities that are subject to EIAD[18]. However, in this case there would not be a significant difference between EPA Sections 66(1) and 66/A(1) because the environmental authorisation procedure, the standard authorisation procedure for the use of the environment, the operation authorisation procedure for environmental protection, and the integrated authorisation procedure for the use of the environment are laid down in EPA Section 66(1). The provisions of EPA Section 66/A(1) do not add anything to this. By contrast, taking the broad sense to protect the environment as efficiently as possible, we can also take the view that besides all activities subject to the EPA, the procedures for the authorisation of any activity involving the use of the environment include additional activities regulated by the laws listed in EPA Section 3[19], especially because an activity involving the use of the environment is not necessarily one that burdens, endangers or contaminates the environment but also one that makes use of the environment. This view is also supported by the fact that EPA Section 66(1) includes client status in the procedure preceding the decision issued by the environmental authority. In other words, EPA Section 66/A(1) must provide for a different procedure. These may be activities subject to the laws listed in EPA Section 3 which involve the use of the environment but in which the competent authority acting is not the environmental authority but the hunting authority, the nature conservation authority or the waste management authority, to name but a few. This chaotic situation is made even worse by the fact that EPA Section 98(1a) uses the word "especially", which, as mentioned above, means that the list in that provision is not exhaustive.

8. *The Supreme Court's Decision No. 4/2010 for the Uniformity of Administrative Law is outdated*

The Supreme Court's Decision No. 4/2010 for the Uniformity of Administrative Law, which provides for the client status of the NGOs listed in EPA Section 98(1), is still in force. The adoption of this legal uniformity decision has been followed by multiple legal amendments and reorganisations which significantly affect its application (applicability). One of the most significant changes was that water authority responsibilities were outsourced from environmental, nature and water inspectorates. Afterwards, environmental and nature

[18] Government Decree 314/2005 (25 December) on the environmental impact assessment procedure and the standard authorization procedure for the use of the environment

[19] EPA Section 3 defines the areas subject to a special Act in accordance with the provisions of the EPA.

inspectorates were integrated into government offices.[20] At the same time, by prescribing the involvement of the competent authorities in a narrower scope than before, and by introducing the examination of speciality issues (the answer to which is not binding on the authority, thus the former "veto right of competent authorities" has expired),[21] NGOs are no longer able to exercise effectively their right to file an action and to be sued on the basis of the legal uniformity decision.[22] Furthermore, currently, the legal uniformity decision does not regulate the client status (or the right to file an action and the option to join actions) of NGOs for the examination of specialty issues. In addition, the legal uniformity decision uses the term "environmental protection authority" when "authority acting in environmental matters" would be more appropriate as an umbrella term to encompass all authorities taking decisions on any element of the environment rather than only the environmental protection authority.[23] Another problem is that the legal uniformity decision, due to the CAP, which has meanwhile entered into force, uses legal terms (e.g. *intervention*) that are no longer in force. The exact definition of the concept of "environmental administrative procedure" as used in EPA Section 98(1) is also a major deficiency in the legal uniformity decision, and as shown above, it is also missing from EPA Section 98(1a). Last but not least, the question arises to what extent the legal uniformity decision complies with Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (and since then Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment) in taking into account the cumulative effects of environmental authorisation procedures, as it manages individual (building) projects, e.g. airports, separately and hence makes it more difficult for NGOs to take action in authorisation chains by declaring an authorisation stage as environmental, and making the involvement of a competent authority a decisive factor.[24]

[20] F. ROZSNYAI KRISZTINA: Ügyféli jogosultságok a hatósági eljárásban – több vagy kevesebb? (Client rights in official procedures – more or less?) *Közjogi Szemle*. 2020/2. sz. 11–16.; SULYOK KATALIN: 4/2019. (III.7.) AB határozat – Zöldhatóságok integrációja. (Constitutional Court Decision 4/2019 (7 March) – Integration of Green Authorities. *Az alkotmánybírósági gyakorlat I-II.* (Practices of the Constitutional Court I-II). Volume II. 955-975; ROZSNYAI KRISZTINA: The Ups and Downs of Hungarian Administrative Law's Europeanisation in the Field of Environmental Protection. *Hungarian Yearbook of International Law and European Law*. 2022/10:1. 316-333.; FODOR LÁSZLÓ: A magyar környezetjog három évtizede (unorthodox áttekintés) (Three Decades of Hungarian Environmental Law (an Unorthodox Review). *Iustum Aequum Salutare*. 2022/1787-3223 2498-533 18 (2). 5-25.; PUMP JUDIT: A közigazgatási reform hatása a környezetjogi szabályozásra (The Impact of Public Administration Reform on Environmental Law). *Közjogi Szemle*. 2020/2. sz. 17-21.

[21] SULYOK KATALIN: Szegek a környezeti közérdek koporsójában (Nails in the coffin of environmental public interest). *Jogtudományi Közlöny*. 2021/9. sz. 409-416.

[22] PÁNOVICS ATTILA: A civil szervezetek szerepe a környezeti felelősség érvényesítésében (The role of NGOs in the enforcement of environmental liability). *Pro Futuro.* 2020/2. sz. 113-127.

[23] F. ROZSNYAI KRISZTINA: A barnamedve esete a szalámival: A közigazgatási eljárási jog a nemzetközi jog és az európai jog kölcsönhatásainak terében. (The case of the brown bear with the salami: Administrative procedural law in the field of interaction between international law and European law). In.: Fazekas Marianna (szerk.) *Új generáció a közigazgatástudományok művelésében; Posztdoktori konferencia, 2013. június 6-7. Budapest*. Budapest, ELTE Állam- és Jogtudományi Kar, 2013. 255-271.

[24] For details, see: ROZSNYAI KRISZTINA – SZEGEDI LÁSZLÓ: A Kúria ítélete a repülőtéri posta üzem építési engedélyének jogszerűségéről. (The Curia's judgement on the lawfulness of the building permit of the airport post office). *Jogesetek Magyarázata*. 2013/4. sz. 48-60.

In my view, as of the date of this thesis, the legal uniformity decision does not seem to make any sense since the right of NGOs to act as clients, file actions and be sued could be satisfactorily managed under the Aarhus Convention,[25] therefore there appears to be no point in preserving the legal uniformity decision.[26] However, even if it remains in force, a legal uniformity procedure should be launched by virtue of Section 32(1)a) of Act CLXI of 2011 on the organisation and administration of courts for the purpose of an amendment, taking into account the above.

9. Poor tools for collective redress in environmental administrative litigation

In my view, the available means of collective redress in administrative litigation (emerging the actions, plaintiffs' association, model actions and privileged plaintiffs' action under Article 17(d) of the Code of Civil Procedure) are poor in their current form. In civil proceeding used class actions (where plaintiffs bring a lawsuit together, and the plaintiffs with the same claims are represented by a representative plaintiff) and representative actions (the authorities or designated organisations are empowered to bring actions against the offending business in the event of breaches of consumer protection laws affecting a wide range of consumers, in order to enforce consumers' civil rights) would also have a place in environmental administrative litigations and could be effective for both the parties and the courts. Let us think on a large number of actions against a major investment with a significant impact on the environment, based on broadly the same rights/contests and pleas, or an activity that pollutes or endangers the environment, against which it is essential to represent the citizens' claims and interests.

In addition, in the Urgenda case, we saw that the plaintiff foundation could act on behalf of natural persons under Article 3:305a of the Dutch Civil Code. The so-called class action gives the foundation the right to bring an action to defend the similar interests of other persons, provided that the foundation represents these specific interests within the scope of the objectives set out in its articles of association. It would be effective and useful to introduce a similar provision in Hungary in order to ensure effective legal protection and to promote concentrated and cost-saving procedures.

10. The general exclusion of settlement in environmental administrative proceedings is not reasonable.

[25] Similarly, see KOVÁCS ANDRÁS GYÖRGY: A polgárok igazságszolgáltatáshoz és jogszolgáltató szervezetekhez való hozzáférése környezetvédelmi ügyekben – nemzeti sajátosságok és az uniós jog hatásai. (Access of citizens to justice and to legal service providers in environmental matters – national characteristics and effects of EU law). *Kúriai Döntések.* 2013/3. sz. 317-320.

[26] SZEGEDI LÁSZLÓ: *Közigazgatási bírói jogvédelem uniós átalakulás alatt? Eltérő jogvédelmi mércék az EU jogának tagállami és uniós végrehajtása során.* (Administrative judicial protection under EU transformation? Different standards of legal protection in the implementation of EU law in the Member States and the EU.). Budapest, HVG ORAC, 2019. 154-171.; SZEGEDI LÁSZLÓ: Access jo Justice for Enviromental NGOs in Hungary – The Quest to Identify „Environmentally Relevant" Cases. *Annales Universitatis Scientiarum Budapestinensis De Rolando Eötvös Nominatae – Sectio Iuridica*. 2021. sz. 75-99.

In force as of 1 January 2018, the EPA provides that no settlement may be concluded in any court procedure relating to an environmental administrative procedure.[27] In my view, such a general exclusion of settlement in all court procedures relating to environmental administrative procedure does not in any way serve the interests of environmental protection or litigants. I am convinced that the first obvious problem with the general exclusion of settlement is that, as repeatedly mentioned above, the EPA does not define the term environmental administrative procedure. But whether you think of a classical environmental administrative procedure (such as a compulsory decision on any element of the environment, remediation or liability for environmental damage), or an administrative act authorising an activity that has a significant impact on the environment, this provision of the EPA is meaningless. According to the CAP provision on settlement, the court only attempts to encourage the parties to reach a settlement if it is possible given the subject matter of the dispute and if there is a reasonable chance of this within a reasonable time, given the circumstances of the case.[28] It is important to see that the settlement is not required by the CAP. It requires willingness on the part of both the authority and the plaintiff(s) and, obviously, this issue can and must be examined on a case-by-case basis. However, the general exclusion of settlement in all cases cannot, in my view, be supported. One of the reasons is that effective legal protection can also be achieved through the legal institution of settlement, avoiding litigation, which can be extremely lengthy and expensive. On the other hand, in an action against a decision authorising the use of the environment, both the user of the environment and the parties concerned are much more interested in resolving the situation for their own sake than in the court's dispute resolution.

11. Deficiency in Decision No. 1/2022 for administrative legal uniformity on the conditions for filing an action for failure to act.

This decision is entitled conditions for filing an action for failure to act and provides that, in the absence of a legal provision explicitly aimed at redress for failure to act, the initiation of an action for failure to act is not conditional on the client initiating a supervisory procedure or applying to the supervisory agency. The statement of claim cannot be dismissed due to the initiation of a supervisory procedure or in the absence of an application to the supervisory agency.

At the same time, the CAP authorises not only the client, but also the person whose right is directly affected by the failure to act. By contrast, this legal uniformity decision, both in its title and in its statement of reasons, applies only to the client and to official procedures subject to the Act on General Rules of Administrative Procedures. For example, in the action for failure to act examined in this thesis, in which the plaintiffs sought a declaration that the Government failed to take appropriate measures to combat climate change, the plaintiffs did not act in their capacity as clients and not in order to seek redress for failure to act in an official procedure. However, both in its title and content, the legal uniformity decision only covers clients as

[27] EPA Section 96/D
[28] CAP Section 65(1)

persons entitled to file an action for failure to act and only the prerequisites for actions for failure to act that are aimed to redress failure to conduct an official procedure.[29]

12. The right of the Commissioner for Fundamental Rights to file or join an action is unduly restricted by law to administrative actions against administrative decisions.

Section 33(3) of Act CXI of 2011 on the Commissioner for Fundamental Rights allows the Commissioner for Fundamental Rights to join administrative actions against administrative decisions related to the state of the environment as an intervener. The intervention of the Commissioner for Fundamental Rights under this law has not become part of administrative actions since more than a decade, even though one of the biggest challenges of environmental litigation, which is less common in other types of administrative actions, is that legal and specialty issues are intertwined, often in the context of fundamental rights. In the labyrinth of environmental litigation, the expertise of the Commissioner for Fundamental Rights (or his deputy) would probably be of great help to judges. In a decision,[30] the Curia interpreted this legal provision and pointed out regarding CAP Section 20(4) that courts perform their duty laid down in this legal provision as part of their obligation under Article P)(1) of the Fundamental Law, in particular by enabling the Commissioner for Fundamental Rights to exercise his right guaranteed by the law. Above all, this means that the Commissioner for Fundamental Rights will be informed ex officio of his right to join any action that directly affects the interests of future generations.

At the same time, the right to join actions laid down in Section 33(3) of Act CXI of 2011 on the Commissioner for Fundamental Rights is incomplete and unduly limited. Insisting on the system of administrative litigation under Chapter XX of Act III of 1952 on civil procedure, which only allows a judicial review of administrative decisions, the Commissioner for Fundamental Rights is only allowed to join an administrative action against an administrative decision related to the state of the environment, and not an action for a government agency's unlawful failure to act. Furthermore, the Act uses an obsolete term since the right of *intervention* was replaced by *joining* as the CAP entered into force.

13. The right of future generations to file an action is excluded

While scientists have no doubt that climate change poses a serious and real danger even for the current generation, and that this danger cannot be limited to people living today, the CAP provides that a party to the action can be an individual who, under the rules of civil law or administrative law, may have rights and obligations.[31] This means that the future generation, i.e. those who have not yet been conceived, cannot be plaintiffs in actions for failure to act.

14. The situation for environmental organisations is deteriorating

[29] Similarly, ROZSNYAI KRISZTINA: Az eljárási kötelezettség aktuális kérdései. (Current issues of procedural obligation.) *Közigazgatási Tudomány*. 2022/1. sz. 125-139.
[30] Curia Order No. Kfv.VI.38.029/2021/7
[31] CAP Section 16(1)1

In Hungary, the situation of environmental NGOs has been deteriorating in recent years.[32] This is particularly regrettable as all European climate trials involved NGOs, indeed as protagonists. In this context, it is also important that, in addition to initiating climate lawsuits, NGOs play another key role in environmental protection and hence climate, namely raising attention and awareness. This leads to the mobilisation of the public, which in turn ensures broad support for plaintiff NGOs in climate actions and thus publicity. I think we have also seen the result of this in the cases of *Urgenda* and *Klimaatzaak.* It is no coincidence that 886 and 58,000 individuals joined the plaintiff NGOs in the Dutch and Belgian trials respectively.

15. *The principle of the separation of powers is not infringed in a systemic mitigation action for failure to act.*

Where an administrative court hearing an action for failure to act finds that the Government has failed to take the appropriate measures to reduce GHG emissions to effectively address climate change, the question arises, based on European climate actions, how far the court can go. Can the judgement impose any obligation in addition to establishing the Government's failure to act? If so, what are the limitations? In this respect, however, the CAP clearly sets out the court's room for manoeuvring by providing that courts can only deliver a declaratory judgement if they find for the plaintiff. In the case at hand, the court can find that the Government has failed to take the appropriate measures to reduce GHG emissions in order to effectively address climate change. Thus, the principle of the separation of powers is not at stake here.

16. *The enforceability of a systemic mitigation judgement in an action for failure to act, delivered in favour of the plaintiff(s), is effective in one part and utterly ineffective in the other.*

In a Hungarian climate action for failure to act, if the court finds that the defendant has failed to act and if the defendant does not comply with the judgement by the due date, the plaintiff or the person concerned may submit an application to the first instance court within 90 days of the deadline for compliance, to enforce compliance as a new legal institution introduced by CAP Section 152, requesting the court to order the defendant to pay a performance fine.[33] Clearly, in contrast to pre-CAP times, when clients had to return to the supervisory agency and then, if they were unsuccessful, to a court each time a government agency did not comply with a court decision requiring it to act, the CAP has introduced an effective enforcement mechanism.

However, this legal instrument is certainly not effective in one respect: the procedure for enforcing compliance with a decision is a non-litigious administrative procedure. Apart from completely obvious situations (where the defendant takes no action at all), a substantive

[32] https://effekteam.hu/okotars-tovabb-romlott-a-magyarorszagi-civil-szervezetek-helyzete/ For a detailed analysis see: BODA ZSOLT: Shrinking space: the changing political opportunities of advocacy groups in illiberal governance, European Politics and Society, 2023.

[33] F. ROZSNYAI KRISZTINA – HOFFMAN ISTVÁN: New Hungarian Institutions against Administrative Silence: Friends or Foes of the Parties? *Studia Iuridica Lublinensia*. 2020/29:1. sz. 109-127.

examination of an application for enforcement of compliance after a climate action for failure to act is certainly a matter of experts. This is not only unusual in a non-litigious administrative procedure but is also excluded by law, since the procedure is only open to documentary evidence.[34] However, it would be unreasonable to expect administrative courts to examine and assess, based on documentary evidence alone, whether the Government has complied with its obligation to take the appropriate measures to effectively address climate change, imposed by judgments that promote a reduction in GHG emissions by 40% and 50%.

17. A new attitude of lawyers needed: "applying old law in a new way" by Lord Carnwath

The future of both the European and expected domestic climate lawsuits that have already begun clearly points to a growing need for lawyers who are well-versed in climate protection, not only at national level, but also at EU and international level. Climate protection and climate change require both lawyers and judges to have up-to-date knowledge of the changes in national law, international commitments and judicial practices, as well as to assess and understand the climate change implications of individual decisions.

5. Expected use of research results

The utility of the three parts of the dissertation differs.

While the first two parts are analytical and comparative, covering the main climate litigation worldwide as well as its present and probable future developments, the third part focuses on administrative law and the European scene. Currently, there is no such detailed overview analysis of this kind in Hungarian secondary literature, so personally and hopefully this dissertation will be a valuable contribution to the lawyers wishing to study this topic in depth in Hungarian. The second part of the dissertation, which deals with the principle of separation of powers and the conditions for initiating a court procedure, will be useful not only in relation to climate litigation but also in other areas of environmental (and administrative) adjudication where the need for a more in-depth examination of these fundamental issues arises. Moreover, the part dealing with the principle of separation of powers is not only of relevance to administrative litigation but to all areas of law, as it applicable not only to litigation, but also to legal theory.

Finally, I hope and expect that the third part, focusing on Hungarian administrative law principles that can be applied in climate litigation in Hungary, will be a useful handbook for lawyers, aspiring plaintiffs, defendants, litigants, and judges involved in future Hungarian climate litigation. I also hope that the dissertation will be able to shape the practice of future Hungarian climate litigation, especially in the light of the research's results on systemic mitigation lawsuits modelled in this last section.

[34] CAP Section 151(3)

6. List of publications in the topic of the dissertation

1. A környezetvédelmi törvény 102. §-ának értelmezése a 2004/35/EK irányelv rendelkezéseinek tükrében. (The interpretation of Article 102 of the Environmental Code in the light of 2004/35/EC Directive.), *Közjogi Szemle*. 2018/11: 4. sz. 21-30. 10 p.
2. Sulyok, Katalin – Bögös, Fruzsina - Paloniitty, Tiina, M. – Eliantonio, Mariolina: Summary Report: Analysis of the Questionnaire, 38. p. (2019)
3. Aarhustól Escazúig: környezeti jogok tengeren innen és túl. (From Aarhus to Escazú: environmental rights from sea and beyond.) *Közjogi Szemle*. 2019/2. sz. 15-22. 8. p.
4. Klímavédelmi perek. (Climate litigation.) *Közjogi Szemle*. 2022/15:2. sz. 14-24. 11 p.
5. Az alapvető jogok biztosának perbelépése a környezet állapotával összefüggő közigazgatási perekben – egy kúriai döntés tovább gondolása. (The intervention of the Commissioner for Fundamental Rights in administrative proceedings relating to the state of the environment - a further reflection on a curia decision.) *Magyar Jog*. 2022/69. sz. 516-522. 7 p.
6. Az éghajlatváltozással kapcsolatos perek jelene és jövőjének lehetséges irányai. (The present and possible future of climate litigation.) *Közigazgatástudomány.* 2023/3:1. sz. 115-138. 24 p. (2023) DOI:10.54200/kt.v3i1.52
7. Kezdeti (elméleti) lépések a magyar éghajlatvédelmi perek terén, avagy mulasztási perek szolgasorban. (Initial (theoretical) steps in the field of Hungarian climate litigation, or lawsuits in poor shape.) *Közjogi szemle*. 2023/3. sz. 1-10. 10 p.
8. The role of national courts: does the right to a healthy environment make a difference to the environment? Lessons learnt from national court rulings, In: Hendrik Schoukens and Farah Bouquelle (eds.): *The Right to a Healthy Environment in and Beyond the Anthropocene, A European Perspective*. Edward Elgar Publishing, 2024. 322-338. 17 p. https://doi.org/10.4337/9781035300426.00025