

# LAW ENFORCEMENT AND CRIMINAL ASPECTS OF ILLEGAL DUMPING IN HUNGARY

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## *Introduction*

Sustainable and rational waste management has become one of our most pressing global environmental issues. The overuse of resources and the production of plastics are causing a worldwide crisis in waste disposal. Developed countries are notorious for producing excessive amounts of garbage and industrial waste, and their destruction ends up in ever larger landfills in some seas. The waste is often shipped to less developed countries. It is no coincidence that Denmark had the highest per capita municipal waste in the EU in 2019, followed by Luxembourg and Malta. The lower value in the Member States that joined in 2004 can be explained by lower consumption. Hungary's municipal waste per capita (387 kg/person) was 22% less than the EU average in 2019. Romania has the lowest value, 28% less than Hungary (URL1). China used to be one of the biggest waste importers, but nowadays, it is often destined for Black Africa and Bangladesh. Tragically, the developing world is forced to take on the environmental burden of processing the resulting waste and the ecological responsibility of producing fast fashion clothing. As well as recycling as much separately collected waste as possible, the aim is to prevent this type of waste from being made in the first place. More and more countries are recognising that waste from single-use plastics, fast-food packaging, excessive packaging, and cheap electronic devices is an extreme waste and a threat to people's quality of life (URL2). The rapid increase in waste is a result of our consumption and production. From a sustainability perspective, reducing waste, including household waste, has become a common challenge. Recent years have seen a shift from a linear economy to a circular economy, which requires destruction to be returned to the economic cycle (Németh-Mészáros, 2022). Of course, the problem does not stop there, as people often find waste dumped by unknown perpetrators under their windows, walking in the woods, or even piling up next to a waste collection island (URL3). Unfortunately, modern man considers as waste any material or energy that is no longer needed, and this interest-oriented perception is reflected in the language used, as we use the term 'collection' as opposed to the chiselled definitions of raw materials and resources (Molnár, 2015). There are many different classifications of waste, yet plastic waste is perhaps the most dangerous precisely because of its lowest recycling rate and longest-lasting environmental impact. Therefore, plastic pollution is undeniably one of the biggest global problems of our time. Most people are unaware of its magnitude and importance because they do not directly experience its consequences. But for animals and aquatic life in particular, there is a massive threat from every piece of microplastic lying in unimaginable quantities in the ocean depths. Researchers estimate that microplastic pollution exceeds 14 million tonnes (URL4). While an estimated 8,300 million tonnes (Mt) of 'virgin' plastic have been produced to date by 2015, around 6,300 Mt of plastic waste had been generated. Of this total plastic waste, 9% was recycled, 12% was incinerated, and 79% was landfilled or accumulated in the natural environment. There, they wait the few hundred years it takes to "decompose" in natural conditions. If current production and waste management trends continue, approximately 12,000 million tonnes of plastic waste will be landfilled or in the natural environment by 2050 (Geyer et

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al., 2017). The waste problem is closely linked to the global imperative of the transition to a circular economy. It is, therefore, a priority issue for the European Union, with directives and determinations setting criteria for Member States to meet, which also impose obligations on Hungary, which we have committed to meet. Such as the elimination of illegal landfills, stricter punishments for those who dispose of waste illegally, a redemption system, and an extended producer responsibility system have been created, as well as the legislative amendments for the rationalisation of waste economic activity, which contribute to protecting our natural environment and its values, and our treasures and let the country be clean (National Waste Management Plan, 2021-2027.).

The sensitivity of the topic is clearly shown by the fact that in less environmentally conscious countries and regions the illegal disposal of waste is not considered an essential form of criminal behaviour “for now”. *“The environmental protection profession is not characterised by holistic thinking, even though by doing so, they would not only be able to manage their topic more effectively, but they would also be able to achieve a much greater impact on consumers through a systemic approach. They can easily and relevantly incorporate environmental protection and damage prevention tools. Adults like to shift the responsibility to their children by exclaiming, ‘the future generation will solve it.’”* (Somfay, 2021, 100). This kind of attitude should be changed because residential or municipal waste disposal causes the most prominent environmental impact problem. This follows from the perspective of the population that the consequences of illegal dumping do not affect the individual but rather affect a larger group of people; that is, it is not considered a direct but a distant, often intangible danger. On the other hand, they assume that transportation and processing are basically the authorities’ responsibility, and they do not feel their own responsibility. In the populist criminal policy, this characteristic attitude is well reflected, thanks to which the legislator assigns a relatively low social danger to such crimes. Although the situation is getting increasingly serious, there is growing pressure on local governments and law enforcement agencies, especially the police, from the local population. Illegal garbage dumping in Hungary has now increased to an extraordinary extent. At the same time, the criminal and law enforcement treatment of the problem must be applied as an “ultima ratio” solution, i. e. when other methods are not sufficient to protect against a phenomenon harmful to society (Amberg, 2020). Still, suppose the educational channels that strengthen prevention do not work satisfactorily, or the state and local government measures related to increasing the number of waste disposal sites are ineffective. In that case, the population rightly expects the sanctions to be tightened by official action. In the meantime, we are at a point where the legislation, professional preparation, law enforcement, and criminal training are deficient in dealing with this crime. Thanks to this, the public’s response often appears ineffective or fake. Contrast all this with the rigour and effectiveness of police action and prosecution against drugs or violent crime. (Sivadó, 2012, 2016, 2017.) The area, therefore, faces significant challenges, the main characteristics of which I would like to describe below.

## Methodology

Primarily, I considered the criminal law regulations affecting the subject area and the investigation findings of the investigative authorities to be of primary importance as I considered the processing of internal police materials to be of utmost importance. Thus, 1.7 of the National Police Headquarters (ORFK) professional task plan for 2021 analysis and presentation of the report on the implementation of the task “Risk factors of waste management and its criminal law aspects” defined in point 1, as well as the Methodological Aid prepared by the Criminal Department of the National Police General Directorate were used “to establish a uniform practice of waste-related measures”. In addition, I also examined the statistical data on the crime of violating waste management regulations, such as the





number of registered crimes and the effectiveness indicators of the investigation and detection. Based on the findings, I searched for criminal and law enforcement-related indicators related to the crime which are essential from the point of view of taking action against illegal dumping. The premise of my research is that the March 2021 amendment of the crime of violating the waste management regulations did not bring a breakthrough in more effective action against corruption since it was a change in authority, just as there was no expansion of the organisation. There is still a need for more specific knowledge on the part of the police force, and the legal disadvantages imposed against crimes have not been significantly tightened. Moreover, this crime did not appear in the organisational efficiency measurement of the police. Hence, unlike other prioritised crimes, its prosecution is not a priority and emphasised task for individual investigative bodies. Nevertheless, there has been a positive shift in the criminal and law enforcement field, although faster and more effective decisions and actions are needed to speed up the process.

### *Hungarian Legislation on Waste Management Offences*

The legal definition of the offence of violation of the waste management regime, as defined in Article 248 of the Criminal Code, has been extensively amended with effect from 1 March 2021. The scope of the Act CLXXXV of 2012 on Waste (from now Waste Act), which fills the framework definition, covers all waste, with the exceptions specified in this Act (e.g. sewage, animal by-products, etc.) and activities aimed at preventing the formation of wastes. In addition, the Government Decree No. 439/2012 (XII.29.) on waste management and waste management facilities and the registration and official licensing of waste management activities is significant. Still, essential provisions can also be found in the Law on the Environment and Nature Protection, as well as in the Government Decree No. 180/2007 (VII.03.) on the transboundary shipment of waste and the Government Decree No. 225/2015 (VIII.7.) on the detailed rules for certain activities related to hazardous waste - an essential provision of the Ht. Article 12 of the Act lays down the rules for waste collection. According to the framework legislation, the waste producer may collect waste generated on the property for up to 1 year without a waste management permit. On a property owned or used by a natural person, a maximum of 3m<sup>3</sup> of waste was generated on the property and not covered by public waste management services, general waste management services, available waste management services not covered by public waste management services, and a maximum of 10m<sup>3</sup> of construction and demolition waste generated on the property may be collected by Art. Article 86(16) of the Act on garbage collection explicitly states that the quantity of debris may be determined by dipping, calculation and technical estimation. The collection of garbage above the amounts provided for in the provisions of the Ht. constitutes a waste management activity which raises suspicion of a criminal offence of breaching the waste management regime contrary to Article 248(1) (a) of the Btk. The competent county government office acts as the waste management authority to ensure that the waste is removed. The owner or holder of the trash, or the owner of the property, shall be responsible for its disposal if this person is unknown.

Cases of public nuisance and administrative proceedings for illegal dumping of waste are distinguished based on the extent of the pollution and the circumstances of the removal. Disposing small quantities of debris (typically one by one) or contaminating public land with a substance is a misdemeanour. In contrast, the illegal dumping of large waste is an administrative offence. With the amendment to the Code of Laws that entered into force on 1 March 2021, the waste management authority will conduct administrative proceedings in the case of waste disposed of or abandoned on the property by another person without the property owner's consent in uncontrolled circumstances. According to Article 1(1) of Government Decree 124/2021 (12.3.21) on the designation of waste management authorities, the



Government shall designate the county government office and the department designated by the Minister responsible for waste management as waste management authorities to act as waste management authorities. The justification for the amendment to the law states that the police remain accountable for combating simple pollution but that illegal dumping of waste is punishable by administrative penalties. However, criminal proceedings are required for waste quantities exceeding 10m<sup>3</sup> and 1,000 kg. The majority of waste-related reports are not criminalised for municipal waste, given the amount, so the investigating authorities forward the statements made to them to the government office, which is less successful in imposing the appropriate sanction and identifying the unknown offender.

The primary offence of illegal dumping of waste can be committed in one of two ways:

- under Section 248 (2) (a) of the Criminal Code, whoever disposes of waste in a place not authorised for that purpose by an authority in such a way as to endanger human life, physical integrity, health, land, water, air or their components or the individual of a living organism;
- under Section 248 (2) (b) of the Penal Code, who disposes of a significant quantity of waste not authorised for that purpose by an authority.

By introducing the quantity limit, the amendment to the law partially helped to take uniform action against the perpetrators of the crime of violating the waste management regulations. The correct interpretation of the new situation has caused problems in several places, as experts and authorities in different countries have different interpretations of the concept of hazardous waste.

Before the change in norms effective from March 1, 2021, the concept of waste in the Civil Code was narrower. The object of the crime could only be the waste capable of endangering human life, physical integrity and health, the earth, water, air or their components, as well as individuals of the living organism. The norm amendment eliminated the previous restriction and, at the same time, expanded the scope of application of the statutory facts. The Ht. based on its administrative regulations (registration, notification or waste management activities without a permit or exceeding the scope of the license), even without proving that the waste is hazardous [Btk. Section 248 (1) point a)] became punishable. In the same way, dumping waste without a permit is punishable if it is committed to a significant amount of waste. According to its interpretative provision, the Civil Code has a substantial amount of waste exceeding 1000 kg or ten cubic meters. The range of qualified cases has also been expanded in the case of waste, which only reaches a significant amount.

Violating the waste management regulations about crime was still carried out in many cases through the illegal disposal of residential waste. Unauthorised dumping and placement of municipal waste at the designated landfill site is primarily characterised by the fact that the perpetrator is not caught red-handed, the illegally deposited waste is mainly found, and the truth is reported to the police. It is also typical that the waste is transported to the place of commission by vehicle or motor vehicle due to its nature, volume or weight (URL5). It can be clearly stated that, with one exception, criminal proceedings initiated mainly for municipal waste, the demolition of motor vehicles, and the illegal placement of construction and demolition debris were committed by private individuals. It rarely happens that during construction, on the instructions of the contractor's representative, the customer, the generated waste is illegally transported and placed without a permit, or the ground is filled unlawfully with it. Among the perpetrators of illegal garbage dumping, the proportion of men is more significant than women, related to the specific features of the committing behaviours. (Tihanyi et al., 2020). The number one solutions of the waste hierarchy include prevention and increasing recycling (Bera & Mészáros, 2022: 82). The investigative authorities carry out prevention by conducting regular inspections with the involvement of the public order staff and installing surveillance cameras and wildlife cameras in cooperation with the municipalities (Pádár et al., 2023). Registers present the data





in which form an information chain can help in the identification and capture of persons who dump different waste (Nyitrai, 2021a, 2022.). These pieces of information, links and chains make up the so-called electronic investigation (e-investigation) (Nyitrai, 2020, 2021b)

### *Statistical Data of Crimes Related to Violation of the Waste Management Regulations in Hungary*

The annual comparison of the national values for the examined crime, in terms of the number of registered crimes, investigation and detection effectiveness, is contained in Figure 1.

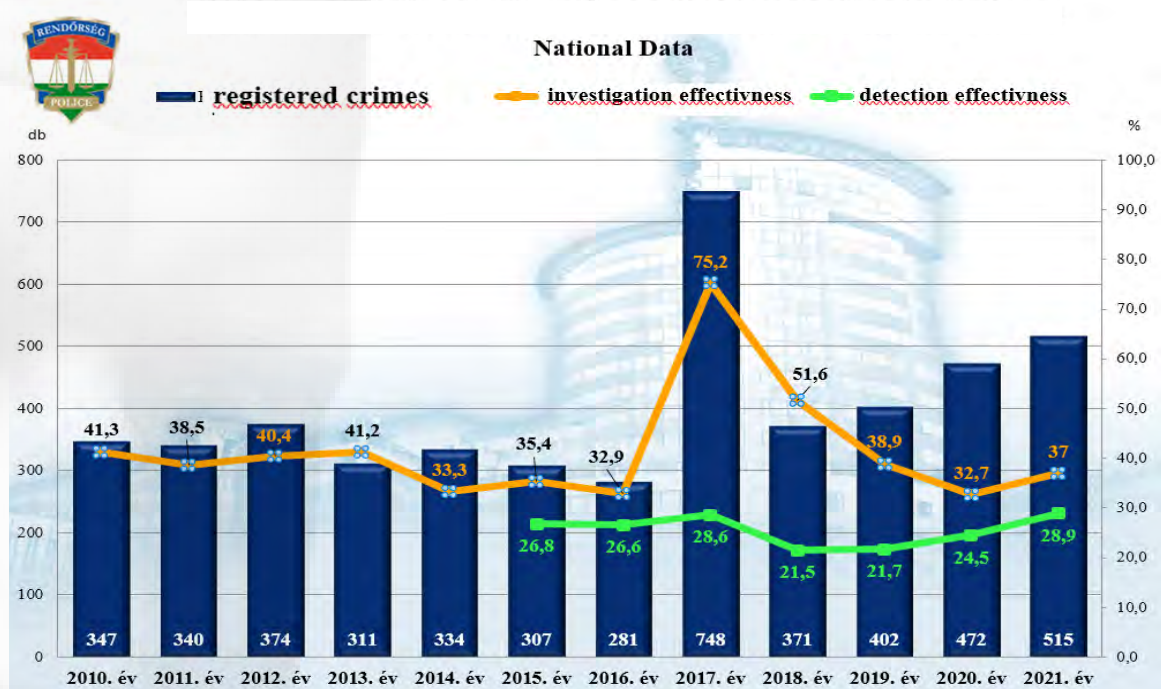


Figure 1, Source: Enyübs

#### **Figure 1** National Data Relative to Violation of the Waste Management Regulations in Hungary

Based on the Unified Investigation Authority and Crime Statistics System (ENyÜBS) data in the figure, it can be established that the number of crimes against waste management varies between 300 and 500 cases per year. Increased circumstances can be linked to a more significant issue or the detection of a serial crime. As far as the investigated crime rate is concerned, the national value of the investigation success rate shows a decreasing trend, ending in 2020 with a discount of 32.7%. However, the investigation intelligence index shows an increase from year to year, although only by a few per cent. The indicator was 24.5% in 2020. The number of registered crimes in illegal waste disposal is only a statistical figure, not the actual waste piles. Of course, all of this is not the fault or deficiency of the investigative authorities/the justice system, as the latency is very high, not all illegal waste disposal is followed by official or criminal proceedings, and this only takes place when this behaviour comes into view (Garai & Molnár, 2021, 170).

I-IX of the year 2022. The data for the same period last year showed that the crime was most often committed on municipal solid waste, construction debris, batteries, electrotechnical waste, and industrial solid waste.



### *Findings and Recommendations of the Hungarian Police National Management for More Effective Action*

As both a transit and destination country, Central Europe, including Hungary is increasingly affected by illegal waste shipments. In addition to the cover-up of green-listed waste shipments, hazardous waste may also arrive in Hungary for uncontrolled, unlawful processing and incineration. Another international trend is the proliferation of plastic waste fires. The background to these is the end of Chinese waste sourcing, which has reduced the scope for recycling. Fifty per cent of the international waste trade is shipped to China, with 7-8 million tonnes of plastic waste entering the country annually. China accounts for 95 per cent of EU plastic waste exports and 40 per cent of total US waste (URL6). Thus, the alleged illegal behaviour may represent a cheap way to eliminate accumulated waste. One study estimates that eliminating Chinese garbage imports will inevitably result in the displacement of 111 million tonnes by 2030, with nowhere to put it (URL7). It is thus more reasonable to assume that international organised crime trends will dominate in the next few years. Despite this, this crime is rated low on the police investigative authority spectrum, as the detection of these crimes is essentially the responsibility of local agencies. Very rarely, due to the speciality and complexity of each case, or in other justified cases, the investigation is carried out by the regional body or by a specialised unit of the National Investigation Bureau of the Police on Standby (from now on the KR NNI), if specifically designated to do so. An essential factor in combating illegal dumping is the mutual sharing of information, joint action by the authorities and the more precise delimitation of the activity. The police cooperate with government agencies, local authorities, notaries, civil guards, nature guards, fisheries guards, field guards, disaster prevention services, the National Tax and Customs Board and the National Food Chain Safety Office to ensure the most successful and efficient detection possible.

It is also essential to sensitise law enforcement personnel to the issue, to have a recurrent patrol presence, and to send information bulletins to public order/police departments, police stations on typical offence locations and methods. It can also be concluded that the reduction of this activity is possible mainly through the involvement of local authorities and NGOs, and the number of procedures initiated depends on the sensitivity of local authorities to the issue. The critical term is sustainability. In the field of waste management, the aim is to minimise waste generation. This can be achieved through a more efficient use of raw materials and a higher recycling rate. Waste generation can also be reduced by promoting the coordination of economic activities along material and energy flows, i.e. by ensuring that the waste materials and energy generated in one production process are inputs for the next (Waste Generated, 2022). It would be helpful to put up warning signs at illegal dumping sites, and some municipalities have already done so. And it is recommended that the public be informed of the damage that this could cause. An excellent initiative is introducing the so-called waste radar app, which has significantly contributed to the fight against illegal dumping (URL8). Facilitating the legal disposal of waste would help to discourage illicit activity, given that legal removal is sometimes more difficult and costly. There are municipalities where the population needs the possibility to dispose of their household municipal waste legally. In addition, the role of crime prevention and the media is highlighted, with the need to inform the public about landfill fees, contact details, exemptions and penalties.

There is a need for increased monitoring of signals received from local NGOs; data received by the administrative authority via mobile applications are not precise - for example, waste deposited in several instalments independently of each other is treated as one, thus exceeding the significant level for which the report is made. A practical problem is that, following a message or other sighting by a member of the public, the environmental authority describes the quantity of waste as "visual", which makes it unclear whether the quantity thus determined is above the criminal threshold and what exactly its





composition is. In the absence of these facts, an inspection is, in any case, necessary. In many instances, when the police arrived at the scene, the waste was no longer there because the local environmental authority had informed them that they were required by law to remove it immediately. This problem can be solved in close cooperation with partner bodies. Another challenge in the case of landfilling is that if you see that there is already rubbish somewhere, others will dump waste there too, making it difficult to distinguish between separate acts. In many cases, the perpetrator's identity can be deduced from the information obtained from the waste screening. Still, a common defence strategy is for those identified to claim theft of their documents (ORFK Task Plan, 2021).

### *Summary and Recommendations*

Based on the above, it can be concluded that more effective policing and law enforcement of illegal dumping face significant challenges and obstacles, along with other countries in similar situations, such as Hungary. Without being exhaustive, these include the following:

- The rules of competence and jurisdiction of the police as an investigative authority. In reality, the jurisdiction rules relating to investigating a particular offence are more critical than the threat of punishment or the degree of social danger the legislator has assessed. The fact how the authorities respond is primarily determined by the resources available to prosecute the crime. "The special feature of the rules governing the powers of the investigating authority is that they divide the tasks relating to criminal matters partly within the police forces and partly between the police forces and other bodies also acting as investigating authorities." (Szabóné, 1974, p. 119). The legislator's modifications of powers and competencies are aimed to transfer priority category offences from one territorial body to another or from a central body to a territorial body. In addition, new priority or exceptional territorial bodies were created or renamed. Still, these did not significantly impact the number of offences assigned to local-level investigating authorities (Vári, 2019). It can be concluded that, until the jurisdictional legislation transfers the investigative tasks of waste management infringements to a higher investigating officer, at least at the territorial level, there will be no significant increase in the number of prosecutions, nor will the investigation or detection rate improve. This is primarily a matter of criminal policy, which means that a decision would have to be taken at the level of professional approach, which would automatically "upgrade" this crime. From then on, it will not be a senior management decision that will determine the allocation of powers. Still, a body with greater capacity and better detection capabilities will investigate such cases from the outset. It would be essential to increase the physical presence of police units in areas affected by illegal waste trafficking. Unfortunately, the physical availability of the police is not relevant to unlawful dumping. Responsiveness is more appropriate (Mátyás et al., 2019).

- Fragmented (difficult to interpret) legal environment. No doubt, this is the biggest headache for law enforcers. On the one hand, due to the nature of the waste management violation framework legislation, the offence is filled with several norms belonging to other branches of law. It defines elements challenging to detect, even factual conduct, without precise knowledge. We need only think about what is considered waste, how to distinguish between different types of waste, and what lawful and unlawful conduct in waste management is. It is entirely different depending on what we classify as waste at the time of detection or during official action. As an example, it is sufficient to mention the tasks related to the seizure of waste. This is because, by default, action must be taken by Article 3 of Joint Decree 11/2003 IM-BM-PM. If, because of its size, weight, nature, quantity, or the need for treatment or care, it cannot be delivered to the authority or the criminal records manager, or if its storage is not



possible, it may be handed over against payment, to the custody and care of an economic operator who can handle it professionally. If, however, it appears that the waste is hazardous based on its composition, particular care must be taken, e.g. safe sampling; removal with the involvement of the disaster control authority, given the nature of the material; disposal as a criminal offence in the case of excise waste, with the participation of the National Tax and Customs Authority. In other cases, the removal of waste is not the responsibility of the investigating authority. Still, it may be necessary, in the case of illegally transported waste that gives rise to suspicion of criminal offences, to seize the litter with the means of transport for confiscation and to landfill it at the nearest landfill site for inspection and proper disposal if there is a suspicion of a criminal offence, the Btk. Section 72 (1) a) of the Criminal Code was used or intended to be used to commit the crime. 73(c) of the Criminal Code, there is a case of compulsory confiscation for violating the breach of waste management.

- Multiple authorities with overlapping powers. In the context of illegal dumping, many authorities have partly overlapping capabilities. The possibilities for action lead to ambiguous situations, resulting in many cases of pointing fingers at each other, which should be avoided by following a strict protocol. The waste management authority of the competent government agency is obliged to provide all assistance to the police officers taking action, including informing the police body conducting the activity of the licensed waste management facilities in the vicinity of the action where waste can be temporarily deposited if necessary. If the police body detecting the offence initiates official proceedings with the waste management authority of the competent county government office or, in the case of infringements of the rules on international waste shipments, with the Pest County Government Office, which has national jurisdiction.

- A system of criminal sanctions that is not suitable for retention. As the statistics show, the number of 4500 or 5500 proceedings per year nationally could be more exceptional, especially when the number of landfills is considered. In addition, most cases will be unsuccessful, with a 30-40% prosecution rate and barely 150 claims being brought to court. Of the few issues that go to court with an indictment, 18 were prosecuted in the first half of 2021, compared to just 53 in the first half of 2022. A significant proportion of cases ended in a criminal conviction without trial, 53 in the first half of 2021 compared to 92 in the same period in 2022. The national trend shows that suspended imprisonment was considered the most appropriate sanction for offenders in 41% of cases, compared to fines in only 24% and community service in 18%. Probation was assessed for 9% of the accused, imprisonment was negligible, and prosecutors only proposed custodial sentences for offenders with a criminal record. In cases where the offence was committed during a criminal trial, this accounted for 7% of the accused (Garai, 2017). Consequently, there is no severe and substantial criminal threat from the sanctioning side either.

- Complexity and cost of proof. The offence is not in the class of simple and easy crimes. It requires a complex and multifaceted investigation, of which the involvement of experts is an essential element and entails considerable criminal costs. One need only think of the fact that the examination of the legal condition for establishing that an activity is likely to endanger human life, limb, health, land, water, air or their components or the individual living organisms, which is necessary to establish the criminal offence of environmental damage, is often another task for experts. The involvement of an expert significantly increases the cost of the procedures.

- Lack of professional competence of police officers. In the case of controls on the transport of waste or the detection of illegal dumping, it is necessary to have considerable expertise to make the right decisions. Still, the police in public places need to have the required expertise. Neither do the members of the investigating authorities, mainly because very few such procedures are initiated; so, valuable expe-





rience has not been acquired and cannot be shared. The specialised expertise required for such investigations includes working closely with the partner authorities and experts involved in the offence under investigation and keeping abreast of changes in the legislative background for each type of waste. For each case, consultation with the authorities controlling the activity under investigation provides new information compared with previous issues, and knowledge of this information is a prerequisite for a practical analysis. The management needs to sensitise law enforcement personnel to the point, to have a regular patrol presence, and to send information to the public order/police departments police stations on the typical places of offences and methods (Methodological Guide ORFK, 2021).

It needs to be more relevant for the evaluation of organisational effectiveness. After the 2010s, solutions were found for the elements of organisational performance evaluation in internal regulations such as Regulation No.18/2012 (X. 12.). ORFK, followed by the BM Regulation 26/2013 (VI. 26.) on the procedure for rating and organisational performance evaluation, and the BM Regulation 36/2013 (XII. 21.) on the criteria for the assessment of corporate performance indicators are to be carried out in the framework of the organisational performance evaluation of specific armed forces under the control of the Minister of the Interior. These standards define which crimes are essential and serve as indicators to determine the focus of the police forces tasks. Not surprisingly, the offence of violation of the waste management order is not included among them. This offence is not interesting for the media either; it does not meet the criteria that would lead the media to present it more often, emphasising its danger to society (Vári, 2017). Even though illegal dumping is a highly irritating activity for the public, and more effective action against it can increase public satisfaction with the police, the latter is also significant in measuring the effectiveness of police work (Tihanyi & Vári, 2015).

- Asset recovery has yet to be extended to this area. As crime is not treated as a priority, its international and organised crime aspects should be emphasised, so the extension of asset recovery to this crime is extremely rare. It is, therefore, worthwhile to broaden the methodological spectrum in this direction (Mátyás et al., 2021).

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