



Le juge administratif et le droit communautaire de l'environnement

National administrative courts And Community Environmental law

Hongrie-Hungary

Réponse au questionnaire Answer to The questionnaire

**SEMINAR FOR COUNCILS OF STATE AND
SUPREME ADMINISTRATIVE JURISDICTIONS**

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Hungarian answers

1. Information and public participation in environmental issues

A - Application of regulations

Has the respective application scope of these texts, and the Community directives in particular, led to disputes? How has national case law clarified the concepts contained in these texts considering, in particular, the case law of the Court of Justice of the European Communities?

The notion of the « public concerned » as provided for under Directive 85/337 has rarely raised legal disputes in Hungarian case law. In one of those cases the administrative chamber of the Supreme Court of Hungary has decided on the scope of the public concerned. The competent administrative body has organized only one joint consultation for the inhabitants of several separated municipalities which have been affected by a request for authorization to release a construction permit of a motorway. The plaintiff has argued that consultations should have been held in each concerned municipalities. The court has ruled that the joint consultation had not breached the law, because all inhabitants of the concerned municipalities had free access to this public hearing.

The clarifications provided on this matter by Directive 2003/35/EC, have been already used by the Hungarian jurisdiction. The notion of the «public concerned »

has frequently been interpreted in a wider sense, which incorporated the concepts of the public "likely to be affected".

B - Judge control techniques

How much control does the administrative judge exercise over the administration's compliance with its obligations to inform citizens and facilitate public participation? In other words, how much discretion does it allow the administration in this regard? And what sanctions are issued when the judge observes that one of the obligations not been met?

The failure to comply with legal obligations lead to the annulment of the permit given by an administrative authority when the irregularities observed by the court are substantial. The irregularities are qualified as substantial violations if the parties' basic procedural rights are affected. The judicial control to make the entire or part of the procedure compliant depends on the character of the case. The Civil Procedure Code enumerates such types of cases where the court can change the decision of the administrative body. E.g. in motorway construction cases the court has no such competence.

C - Open question

In addition to the two previous questions, has your court issued other decisions on waste law or polluting installations law that should be noted? If yes, please summarise these decisions in a few lines.

In the last few years Hungarian courts have not issued significant decisions on waste law or polluting installations law.

A - Application of regulations

How are responsibilities distributed under your national legislation in connection with the restoration of polluted sites? Does the selection of the party responsible (operators of sites or holders of waste) raise problems? Moreover, is it possible, in certain cases, to question the responsibilities of the public authorities in charge of applying the regulation in the event that they have not sufficiently exercised their powers to monitor and control industrial manufacturers?

According to Article 102 Subparagraph 1 and 2 of the Act LIII of 1995 on the general rules of the environmental protection, liability for environmental damage or for any risk to the environment shall fall joint and severally - pending proof to the contrary - upon the person who is registered as the owner or possessor (user) of the property after environmental damage or threat to the environment has occurred on which the activity resulting in damage to the environment or posing imminent threat to the environment was carried out. The owner shall be exempted from joint and several liability if able to name the actual user of the real property and if able to provide proof beyond any reasonable doubt that liability does not lie with him.

The exemption of the owner from liability for environmental damages raises difficulties when the owner evokes that his/her real estate was an abandoned property.

Pursuant to Articles 102/A and 102/B, the relevant public authorities can exercise their power immediately against both the operator and the owner.

As a general rule, liability for damages caused within the jurisdiction of government administration shall be applied in environmental protection cases. However, there has been no significant cases on this matter so far.

B - Judge control techniques

What is the scope of the powers of a judge ruling on a dispute concerning the application of one or other of these regulations? Are there procedural regulations or rules of evidence before the judge or procedures for establishing specific facts connected with these matters, given, in particular, their specific technical nature?

When asked, for example, to rule on the decision taken by the relevant authority on the request for prior authorisation provided for under Directive 96/61, is the judge only permitted to annul the decision? Or may the judge also amend the decision or impose other measures?

What rules for the transfer and taking of evidence does the judge apply to settle the dispute? Can the judge request special investigation measures (e.g. expert opinions or amici curiae)?

In principle the judge is only permitted to annul the decision issued by an administrative body, except for special cases in the Civil Procedure Code (decisions concerning environmental cases cannot be amended by the court). The courts are not allowed to take evidences ex officio, except for cases where the administrative decision is invalid, or for cases where minors are affected. In other legal disputes the judge is only allowed to order the taking of evidences upon the initiative of the parties concerned. On that basis the judge can request special measures such as submitting expert opinions.

C - Open question

In addition to the two previous questions, has your court issued other decisions on waste law or polluting installations law that should be noted? If yes, please summarize these decisions in a few lines.

In the last few years Hungarian courts have not issued important decisions on waste law or polluting installations law.

Annex

Act LIII of 1995
 on the General Rules of Environmental Protection
Section 101.

(1) Polluters of the environment shall bear liability for the impact of their activities upon the environment according to criminal and civil law, regulatory and administrative provisions, and in the manner governed in this Act and in other legal provisions.

(2) Polluters of the environment shall:

a) refrain from engaging in any activity posing imminent threat or causing damage to the environment, and shall cease such activity where applicable;

b) notify the environmental authority without delay concerning any threat to the environment or environmental damage, and shall supply the information requested by the environmental authority and as specified in specific other legislation;

c) where environmental damage has occurred, take all practicable steps to mitigate the adverse impact, and to limit or to prevent further environmental damage, such as in particular, to control, contain, remove or otherwise manage the relevant contaminants causing the environmental damage and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further environmental damage and impairment of services;

d) where environmental damage has occurred, take measures to restore the baseline condition, or a similar level as specified in specific other legislation, or to restore, rehabilitate or replace the damaged natural resources and/or impaired services;

e) accept responsibility for the environmental damage they have caused, and to cover the costs of prevention and rehabilitation.

(3) In the event of failure to comply with the requirements set out in Paragraphs *a)* and *e)* of Subsection (2), the environmental authority, or the authority that has granted the relevant authorization at the request of the environmental authority, or the court shall - depending on the degree of threat to the environment or the level of environmental damage - limit the activity posing imminent threat to the environment or causing damage to the environment, or shall suspend or prohibit the activity in question pending compliance with the conditions it has established.

(4) Where performance of the preventive and remedial measures concerns any area that is owned, or is in the possession or use of others, the owner or user of the real estate property in question shall comply with having these preventive and remedial measures carried out. The owner or user of the property in question shall be entitled to financial compensation.

(5) Polluters of the environment shall be required to provide an environmental security and may be required - under the conditions set out in specific other legislation - to obtain environmental liability insurance for the financing of clean-up operations for any unforeseeable environmental damage that may result from their activities. Polluters of the environment may set aside provisions for environmental protection purposes as specified in the relevant government decree for any environmental liabilities they may have or are certain to have in the future.

(6) The Government shall define the activities referred to in Subsection (5), and shall decree the form and measure of the security and the conditions for its appropriation, the rules for accounting and keeping records of such security, as well as the regulations for environmental liability insurance coverage.

Section 102.

(1) Liability for environmental damage or for any risk to the environment shall fall joint and severally - pending proof to the contrary - upon the person who is registered as the owner or possessor (user) of the property after environmental damage or threat to the environment has occurred on which the activity resulting in damage to the environment or posing imminent threat to the environment was carried out.

(2) The owner shall be exempted from joint and several liability if able to name the actual user of the real property and if able to provide proof beyond any reasonable doubt that liability does not lie with him.

(3) The provisions of Subsections (1) and (2) shall be appropriately applied to the owners and the possessors (users) of non-stationary (mobile) contaminating sources.

(4) If several polluters of the environment jointly form a business association to unite the similar or complementary activities that they had formerly performed, such economic operator shall, in respect of environmental protection obligations, be regarded as the successor in title of the founders, and its liability shall be joint and several with the founders.

(5) Those members (shareholders) and executive officers who have supported a resolution (measure), in respect of which they knew, or should have known given reasonable care that such resolution (measure) if carried out will cause environmental damage, shall bear unlimited and joint and several liability in the event of the termination of the business association for the company's ensuing liability for remediation and compensation for damages, which the company did not satisfy. Those members (shareholders) and executive officers who did not take part in the process of adopting the resolution (measure) or voted against it, or protested against the measure shall be exempt from liability.

(6) Any executive officer of the business association who is subject to the liability referred to in Subsection (5), may not serve as an executive officer of a business association whose activities are subject to an environmental license, a single environmental permit, or an authorization prescribed by the Act on Waste Management.

Administrative Liability

Section 102/A.

(1) Polluters of the environment shall be exempt from administrative liability if able to verify that the threat to the environment or the environmental damage:

a) was caused by an act of armed conflict, war, civil war, armed hostilities, insurrection, or natural disaster;

b) is the direct result of the enforcement of a final and compulsory resolution of an authority or court.

(2) Polluters of the environment shall take the measures specified in specific other legislation with a view to prevent environmental damage and, where environmental damage has occurred and remedial measures are required:

a) to undertake primary remediation to restore the baseline condition of the environment, or to restore, rehabilitate or replace the damaged natural resources and/or impaired services;

b) to undertake complementary remediation where primary remediation failed:

ba) to provide a replacement for the damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services;

bb) if the replacement referred to in Subparagraph *ba)* failed to produce results, the damaged natural resources and/or impaired services shall be replaced by an equivalent alternative to those resources or services, whose cost is equivalent to the estimated monetary value of the lost natural resources and/or services.

(3) Polluters of the environment shall undertake compensatory remediation until the completion of remedial measures, to compensate for the interim loss of natural resources and services pending recovery of the damaged natural resources and/or impaired services.

(4) The environmental authority may order polluters of the environment to supply information concerning any imminent threat of environmental damage or any suspicion of such threat, and of any damage to the environment that has occurred. The environmental authority, if it finds the information supplied unsatisfactory, may require the person in question to provide supplementary information.

(5) In the cases specified in Subsection (2) of this Section and in Paragraphs *c)*-*d)* of Subsection (2) of Section 101, the environmental authority, in accordance with the provisions of specific other legislation:

a) shall order polluters of the environment to undertake the preventive and remedial measures laid down in this Act and in other legislation in connection with environmental damages;

b) may itself undertake the preventive remedial measures in connection with environmental damages, or may hire others to do so.

(6) Where remedial measures are required for several instances of environmental damages, or several instances of damaged natural resources and/or impaired services, and remediation cannot be carried out at the same time, the environmental authority shall be entitled to decide which instance of environmental damage is to be remedied first. The environmental authority shall adopt its decision in consideration of the type and the gravity of damages, the size of the area they cover, the possibility of natural recovery, and their risks to human health.

(7) Where polluters of the environment are exempted under Subsection (1), they are nonetheless required to undertake the measures with a view to prevent the threat to the environment or the environmental damage, or to mitigate the adverse impact, as well as the measures specified in Subsection (2).

(8) Where an employee or a cooperative member is causing any threat to the environment or environmental damage in their official capacity under employment or membership, liability shall fall upon the relevant employer or cooperative.

(9) In connection with any threat to the environment or environmental damage caused by an agent, liability of the agent and his principal shall be joint and several.

Section 102/B.

(1) Where damage to the environment has been established by final decision, the environmental authority shall adopt a resolution ordering remedial measures with a prohibition of transfer and encumbrance concerning those properties of the person required to undertake the said remedial measures, which are deemed sufficient to cover the estimated costs of the remedial measures.

(2) Based on the resolution referred to in Subsection (1), the environmental authority shall contact the real estate supervisory authority to register the prohibition of transfer and encumbrance in the real state register, and to remove it from the register when the person in question had in fact carried out the remedial measures required.

(3) If any part of the costs of preventive and/or remedial measures in connection with environmental damage had been financed from the central budget in the stead of the polluter of the environment, the environmental authority shall file a lien on the real estate properties owned by the polluter of the environment to the benefit of the Hungarian State up to the amount financed, and - with a view to provide security - shall order prohibition of transfer and encumbrance registered on the properties in question, with the exception of the properties on which prohibition of transfer and encumbrance had already been registered under Subsection (1). If the properties owned by the polluter in question fail to cover the sum financed from the central budget, the environmental authority shall file a lien on the movable assets of the polluter affected.

(4) The lien filed on behalf of the Hungarian State shall be cancelled by order of the treasury if the polluter of the environment reimburses the amount financed by the central budget to the appropriate chapter set aside for environmental clean-up operations.

(5) The environmental authority may demand polluters of the environment to repay the costs of measures within five years from the date of conclusion of these measures or from the identification of the polluter of the environment, whichever occurs later.

Section 102/C.

(1) With regards to any threat to the environment and environmental damage that concerns any other Member State of the European Union, cooperation must be ensured with the Member State affected concerning the necessary preventive and remedial measures, and also with a view to the adequate supply of information.

(2) Where environmental damage could affect another country, the Minister shall provide sufficient information to the country affected with respect to the environmental damage in question.

(3) The Minister shall report to the European Commission, and to the Member States concerned, including a proposal for preventive and remedial measures - also covering the costs of prevention

and rehabilitation - the discovery of any environmental damage by the competent environmental authorities on their areas of competence that did not originate within the territory of the country.

Liability for Damages

Section 103.

(1) Damage caused to other parties by virtue of activities or negligence entailing the utilization or loading of the environment shall qualify as damage caused by an activity endangering the environment, and the provisions of the Civil Code on activities entailing increased danger shall be applied (Civil Code, Sections 345-346).

(2) If the injured party does not wish to enforce its claim for damages as specified in Subsection (1) against the party causing the damage - on the basis of a statement pertaining to this made by the injured party within the period of limitation - the Minister may enforce said claim to the credit of the environmental protection fund special appropriations chapter.

Section 104.

If the person or the entity performing an unlawful activity changes, the rules of the liability of the legal successor shall be applied to the person or entity performing the activity, unless the parties have agreed otherwise in a contract.

Section 105.

In the event the user of the environment is terminated without a legal successor during voluntary or involuntary liquidation, the transformation of a state enterprise into an economic association or during the utilization and sale of state assets, the costs of cleaning up environmental damage and the compensation for environmental damage sustained as a result of the activity shall be shown in the statement of assets on the basis of an assessment of the state of the environment.

Environmental Fine

Section 106.

(1) Those persons who violate the provisions of legal regulations or official decisions that are aimed at the protection of the environment or who exceed the standards established therein shall pay an environmental fine in conformity with the level, severity and recurrence of the environmental pollution and environmental damage they caused.

(2) The environmental fine shall be paid over and above the environment-utilization contribution and the environmental load charges. The environmental fine shall be construed as a public debt collectible as taxes.

Section 107.

The fine does not exempt the recipient from criminal liability, misdemeanor liability or liability for damages; nor does it exempt the recipient from the obligation to restrict, suspend or ban the activities and develop adequate protection and restore the natural or previous environment.

Act XLIII of 2000
On Waste Management

Section 4.

To achieve the goal of waste management the following general principles shall be applied:

- c) on the basis of the principle of manufacturer's responsibility, it shall be the responsibility of the manufacturer of the product to select product and technology properties favourable from the point of view of waste management, including the selection of resources, the resistance of the product to external effects, the life cycle and possible recovery of the product, and the planning of recovery or disposal of waste originating from the production and use of the product and from the product itself, as well as contributing to the costs of the treatment;
- d) on the basis of the principle of shared responsibility, parties concerned in the total life cycle of the product and its waste shall cooperate in the fulfilment of duties arising from manufacturer's responsibility;
- g) on the basis of the polluter pays principle, the producer or holder of waste or the manufacturer of the product that became waste shall pay the waste treatment costs or dispose of the waste; the polluter shall be responsible for the abatement of environmental pollution caused by the waste, for the restoration of the state of the environment and the reimbursement of damages including costs of restoration;

Section 30.

(1) In case of waste abandoned in a real estate, the duty of ensuring waste treatment shall be placed upon the holder of the waste, or, if this person cannot be identified, the owner of the real estate, until the contrary is proved.

(2) The local government shall ensure, within the territory under its administration, the transportation and recovery or disposal of waste abandoned in public areas in the framework of the public service as provided for in Section 31.

(3) The environmental protection authority shall oblige

- a) the holder of the waste,
- b) the owner of the real estate, if the holder of the waste cannot be identified,
- c) the local government, if the waste is abandoned in a public area

to transport and dispose of the waste if the duty referred to in Subsections (1) and (2) is deliberately unfulfilled.

(4) If the holder of the abandoned waste can be identified, the cost bearer shall lay a claim against him for reimbursement.

Section 46.

(1) In connection with any threat or damage to the environment resulting from wastes the provisions of the CPA shall apply.

(2) In connection with landfills of waste, the term of limitation for any environmental damage caused by the facility or by the waste disposed therein shall be thirty years from the date of closure of the landfill.

Security and Insurance

Section 47.

(1) Any economic operators who produce hazardous wastes in the course of their activities in the quantity specified in the relevant government decree, as well as waste management operators:

- a) are required to provide security as specified in specific other legislation;
- b) may be required - under the conditions set out in specific other legislation - to obtain environmental liability insurance for the financing of clean-up operations for any unforeseeable environmental damage that may result from their activities.

(2) The Government shall decree the form and measure of the security and the conditions for its appropriation, the rules for accounting and keeping records of such security, as well as the regulations for environmental liability insurance coverage.

(3) For waste treatment installations the security shall cover the costs of liquidation that may occur upon closing down the facility or when terminating the activities. In the case of landfill, the

security shall - additionally - cover the costs of post-treatment and monitoring of the site for a maximum period of thirty years.

Liability insurance

Section 48.

(1) Any economic organisation generating hazardous waste in the course of its activities, and any operator managing hazardous waste shall take out a liability insurance as provided for in the separate legal rule. The fact of holding the insurance policy and any modification to it shall be notified to the inspectorate.

(2) The economic organisation shall maintain the insurance as long as the conditions set out in Subsection (1) prevail.

(3) Detailed rules of liability insurance are provided for in a separate Act.

Waste management fine

Section 49.

(1) Anyone who by act or negligence

a) violates the provisions of waste management legislation or those of a relevant official ruling, or fails to perform or performs improperly his duties included in the above provisions,

b) carries on waste management activities bound to an official permit, approval or notification without an official permit, approval or notification, or in a manner deviating from them,

c) endangers or damages the environment by violating the provisions on environmental protection, must pay a waste management fine.

(2) Waste management fines shall be imposed by the environmental protection authority.

(3) After a period of one year from obtaining knowledge of an act referred to in Subsection (1) the environmental protection authority shall not have the possibility to impose the fine. No fine shall be imposed after a period of five years from the time of the commission of the act unless it is effected by preservation of an illegal situation. In such cases the prescription shall not start as long as the illegal situation prevails.

(4)

(5) The waste management fine shall not provide immunity from criminal liability and liability for misdemeanours or damages, furthermore from the restriction, suspension or prohibition of activities as well as from the obligations of taking appropriate protection measures and restoring the natural or former state of the environment.

(6) Non-appealable waste management fines shall be considered as public dues to be enforced officially.

(7) The rules of procedure for imposing waste management fines, and the amount and manner of the determination of fines shall be provided for in a separate legal rule.