Questionnaire on National Laws, Practices and Experiences on Enforcement – HUNGARY

1. *Please describe generally the most import tools for the enforcement of environmental law in your country. Also describe the relative "weight" of private law, administrative law and criminal law for the enforcement.*

Environmental enforcement is mostly based on public administration and within this field even after 20-30 years still the special environmental protection fine is the major legal consequence for infringements of environmental law. This is far from being satisfactory, as on the one hand the overestimation of the fine does not reflect preventive policy at all, and on the other hand the amount of the fine does not follow the real life economic situation, thus has less and less effect. Of course, there are civil law and criminal law options, too, but very rarely used, thus the relative weight for both is minimal. We estimate in nutshell their importance at the end of point 2.

2. *Please answer sub-questions I-IV **for each situation listed as a-i below**. Also indicate whether you know of national cases where these issues have been dealt with:*

I: Which sanctions are provided under national law (criminal, administrative etc.)?
II: Can NGOs and/or citizens challenge the enforcement – or lack of enforcement – by the competent authority, or is it within the full discretion of the competent authority to decide whether and how offences should be sanctioned? (If NGOs and citizens can challenge such decisions and omissions, including failures of a procedural character, please describe how.)
III: In light of European Community law, including the possible direct or indirect effect of directives, does national law grant NGOs and/or affected citizens the right to take direct enforcement measures against the polluter?
IV: Could the competent authority under national law be held liable for erroneous acts and for omissions (non-enforcement) in the cases listed below? If so, how?

a. <u>When an EIA project is established without an EIA permit</u>.

I: Administrative sanctions, first of all fine and the suspension or closure. There is a special reference and set of sanctions to this type of unlawful activities within the Gov. Decree regulating EIA and IPPC.

II: Generally speaking, there are two possibilities open for NGOs in all the cases, mentioned in this questionnaire and in any other cases, not mentioned here. These options have been codified already in the environmental act in 1995:

- first, environmental NGOs may initiate a procedure against the offender in front of the environmental authorities, but after a refusal, they have no other special means, but the general administrative procedure;
- second, the same NGOs may file a lawsuit against the offender.

These two options are not linked, so the choice is for the NGOs, whether they use one or both. Consequently, none of the above options mean that the enforcement measures themselves may be challenged, as the actions may only focus on the polluter and not on the public authority.

III: See above, the second part of the answer.

IV: There is only one option open for the parties of the given case, that is a lawsuit under civil law against the authority, if one can prove that the action or failure of action caused a damage, and the fault on behalf of the authority is really unlawful. Otherwise it is the right of the public prosecutor to initiate any other kind of liability measure in case of error or fault of the authority. The act on

general administrative procedure has been amended and from now on, there is an other option, that is the authorities shall pay back the special administrative fee if they are not able to keep the time limits of their procedure.

b. When conditions attached to the EIA decision, granting a development consent, are disregarded.

Same as under a)

c. When an IPPC facility is established without an IPPC permit.

Same as under a)

d. When an IPPC facility is permitted without prior assessment in accordance with article 6(3) of the Habitat Directive.

Same as under a), as there are no specific requirements, even the prior assessment is not regulated in a way which is clearly implementable.

e. When an IPPC facility is operated in violation of conditions of an IPPC permit.

Same as under a), plus the operator is required to develop a remediation plan.

f. When an IPPC facility releases greenhouse gases beyond what is provided for by allowances under the ET Directive.

Similar to a), the major instrument is again the fine.

g. When an IPPC facility has negative impact on Natura 2000 sites beyond the threshold in article 6(2) of the Habitat Directive.

Same as under d) above, so there are no specific consequences.

h. When water plans adopted under the Water Framework Directive – or for the moment existing water quality standards laid down in the "old" water directives – are not complied with.

There are no specific requirement related to the infringement of plans or programmes, so the general legal consequences apply here, too.

i. When air plans under the Air Framework Directive are not complied with.

See answers under h)

Please, comment on whether you find the national means of enforcement adequate, and if, based on the national experiences, you have any general suggestions for improving the enforcement.

As it has already been mentioned, in most of the cases the legal consequences of any infringement are connected with public administration, and within this, this usually means fines. The general requirements of environmental legislation – such as in connection with quesiton h) and i) – are mostly out of interest, which means here that there is less attention to develop special infringement cases for these type of omissions, so only the 'measurable' or somehow 'quantifiable' infringments are taken into consideration. The missing permit or disregard of permit conditions also belong to this category. The direct intervention on behalf of the authorities is possible, there are framework legal conditions both within the environmental act and in the different specific regulations, but theses are very rarely used. The reason is simple - the conditions and terms are so flexible and so general, that the proof is relatively difficult, so the authorities are simply "afraid of" using them. We

may also add the widespread use of fines, which is taken as satisfactory.

The use of civil law measures is limited, due to the unpredictable consequences of a lawsuit and the lack of clear jurisprudence, but this leads to a vicious circle – if there are no cases, the development of jurisprudence is very difficult. The civil law judges prefer to use 'old' civil law concepts instead of the 'new' ideas, so the different environmental way of thinking – more reference to principles as precaution, widening the understanding of polluter pays principle, etc.

In case of criminal law, there are two shortcomings: on the one hand the limited scope of Criminal Code, which does not cover too many infringement cases, and on the other hand the difficulties of proof and again lack of understanding. The police investigations do not want to go too far in clarifying the case, they are happy to leave it for public administration. Also the court decision are usually very weak, we do not know of any strict judgments.

3. *How is article 9(3) of the Aarhus Convention, regarding access to administrative or judicial procedures for members of the public to challenge violations of environmental law, complied with? In which situations is it NOT complied with?*

The possibility is open for everyone, thus the legal framework is available.

4. *Please identify possible factors, such as costs, length of procedures or other practical matters, that may prevent effective access to justice for members of the public.*

Lengthy procedure is one of the greatest shortage of judicial practice, but it is not environmental specific. This is a real preventive element in the way of effective enforcement. The other great shortage is the lack of understanding by most of the judges. Environnmental law requires a slightly different logic and attitude from the decision-makers and judges and they are keen to rely on older formula and way of thinking. If the question of environmental legitimacy is conflicting with the traditional concept of contractual obligations, then most probably the first is lost (se my personal experience). Costs may serve as a difficulty only in those civil law cases, when there is a direct economic value of the litigation. Otherwise costs are not limiting the civil actions – e.g. the NGOs have to pay the costs of challanging the legitimacy of an administrative decision in front of the court only if they lost the case, they do not have to pay in advance. Also these costs are relatively law (the judicial fee challenging an administrative decision is less then 60 Euros! Of course a relatively small amount of advocacy fee may be added to the judicial fee, but usually is around the same amount.)

5. *Do NGOs and/or citizens have access to injunctive relief and interim legal remedies? Do you know any national cases which have dealt with this?*

See answer under 2a. There are severel cases, from among the most recent ones we may mention the M0, the Eastern part of the ring around Budapest, where there have been more examples of interim measures taken by the court as an answer for NGO actions.

6. *Are there any examples where a final administrative decision has been reopened because of a complaint based on later case law from the ECJ?*

Definitely no such example.

7. *Has there been any national case in which the State or the local authority have been held liable for not remedying environmental damage or other damage in violation of EC environmental law?*

Definitely no such example.

8. *Do you now of any significant developments, good practices or failures (e.g. cases, new laws,*

new institutional arrangements, or new policies) with regard to the enforcement of EC environmental law, not covered by the previous questions, that you would like to highlight?

In my estimate, there is a minimal implementation of EC environmental law in Hungary. This means that on the one hand the regulators do not wish to go beyond the EC requirements and on the other hand the authorities and courts are still learning EC law, respecting it, but from a certain distance.

2009-09-27

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