National Report Hungary (2nd version)

Gyula Bándi

1. Right to environment and the fate of the decisions of the Constitutional Court

In many instances, I could refer to those decision of the Hungarian Constitutional Court which interpreted those provisions of the Constitution, which contain the right to environment. In the previous Consitution (1989-2011) these were Art. 18 and 70/D, while in the current Constitution – Fundamental Law of Hungary, April 25, 2011 – these are Art. XX and XXI. The content is more or less the same, with some additional elements, but I could already present them in our previous meetings.

The Fundamental Law in theory was made to be a long-lasting constitution, but unfortunately there were several critics on behalf of the EU institutions or even the Constitutional Court itself related to the Fundamental Law, but even more to other acts, consequently the Parliament had to decide between two options: to change the criticised wordings of the acts or to amend the Fundamental Law in a way to insert those major references, which were criticised as being contrary to the constitutional provisions. In some cases, the first option was used, but in many cases the second.

The last (at least today) amendment of the Fundamental Law is the famous fourth amendment, having a serious consequence on the interpretation of environmental rights.

The following provision has been inserted into the Final Provisions of the Fundamental Law by the fourth amendment (published in the Official Journal – Magyar Közlöny – at 25th March) in this respect:
„5. Those decisions of the Consitutional Court which had been adopted before the entering into force of the Fundamental Law are repealed. This provision does not have an effect on those legal consequences, evolved by these decisions."

Actually this means, that the Constitutional Court officially, formally may not use in its reasoning those remarkable decisions, which I personally quoted many times. It is even more important, as there had been a legal debate between scholars and legislators, which decisions may be referred to in the future and which are outdated. The borderline in most of these interpretations was the wording of the Fundamental Law. If the new provisions are similar to the old ones, we may claim that the interpretation is still valid. This was the case with the right to environment. And now, it seems to be over.

There is one slight possibility: the likely new decisions of the Constitutional Court, as they may easily repeat all those arguments, which had been used in the last 20 years, due to the fact that the new wording is mostly the same (these include issues as the prohibition of stepping back or that the bearer of these rights is the society and even the environment, etc.).

Since the entering into force of the Fundamental Law (1 January 2012) there was one decision of the Court, where the environmental rights has been referred to. This is the

decision 44/2012. (XII. 20) AB concerning the repeal of a Government Decree of 2008 (358/2008. (XII. 31.) Korm. rendelet) on the authorization of premises. This authorization is used in case of those wide set of projects, which do not belong to the scope of EIA or IPPC permitting, but still may have likely adverse environmental consequences.

The case had been taken to the Court by the ombudsman (as the Fundamental Law and the new act on the Constitutional Court limited the list of those claimants, who may initiate the procedure of the Court) on the basis of procedural and substantive environmental rights. The procedural problem proved to be the neglect of the Government to involve the National Council for Environmental Protection – an independent consultative body of the Government – into the preparation of the legal rule. The substantive rights referred to the infringement of the rights of the parties and public participatory rights. The main provisions of the Fundamental Law were the Art. XX and XXI, plus those provisions of the environmental act (Act LIII of 1995), which require the drafter to prepare a report on the likely environmental consequences and present it to the Council.

The Court began the review with the procedural issues and did not go further, saying that the procedural mistakes could themselves lead to the annulment of the Decree. The Court summarized:
"(20) ... the National Council for Environmental Protection is not an interest representation body, but such a social organ, which is devoted to provide the wide social, scientific and professional foundations of environmental protection... The obligation to ask for the opinion of the National Council for Environmental Protection could have been taken also as a legal guarantee as the constitutional provisions related to the right to environment may also cover a factual problem: it should be examined, whether the given level of environmental protection is going to be altered due to the legislation...."

2. New Civil Code

Along the line of the present legislation policy, the Parliament has adopted some weeks ago a new Civil Code – Act V of 2013, emerging the original civil law issues with company law. Interestingly enough, this is the second new code in the last 4 years, as in 2009, the socialist majority already adopted a new civil code, which was to enter into force in 2011, but the new Parliament dismissed the previous act and made a new one. Most of the civil lawyers agree with the new act.

In terms of environmental issues, the major difference is that the 2009 version contained special provisions related to damages caused by environmentally dangerous harmful activities, but the present code did not touch the previous version of the strict-liability damage, used in the last 30 years.

The only real change we may mention, appears within personal rights, meaning the better introduction of the protection of private life and home, similar to Art. 8 of the European Convention of Human Rights. There is also as a kind of automatic reaction to the infringement of such rights a kind of 'inury fee' has been introduced ont he basis of

German experiences, covering also the changes of the environmental conditions of the person. It is not clear today, what shall it mean in the future jurisprudence.
The Code is entering into force next January

3. The new Criminal Code

Along the line of renewing all major acts – the procedural acts are coming next – the Parliament also adopted a new Criminal Code (the Act C of 2012), entering into force in summer. This Code seems to be much stricter then the present one in force, for example in some limited number of cases (e.g. murder) even the youngsters above 12 years may be subject to criminal liability.

The positive message for us is that the environmental crimes received an individual chapter (Chapter XXIII), compared with the present, less favourable situation – today environmental crimes were listed as part of crimes against public health.

The new chapter covers the original three environmental crimes on the one hand - environment, nature, waste -, plus a number of others, which have been moved to the new chapter: crimes with ozone depleting substances, cruelty with animals, unlawful hunting, organizing animal fights, but also the different nuclear crimes arew mentioned here.

4. Waste legislation again

The new waste act is under a total revision just today (literally). Adopted in November 2012 and now nearly every article is changing a bit. The major line is similar, that itt o centralize waste management issues as much as possible and partly nationalize public services. There are bad directions again: for example the major condition of acting as a public service provider is to be qualified by the new central waste management agency, but according to the draft there shall be no public participation in case of this procedure (while the general environmental protection act in 1995 provided a general right of environnmental associations to be parties within environmental procedures), also there is no administrative review open for the actor, but only judicial, etc.