

## **Effective Liability for Environmental Damages - The importance of financial security and public participation -**

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The association Justice and Environment (J&E) is a European network of environmental law organisations which was created in 2003 and was founded as non-profit association in 2004. J&E is striving to protect the environment, human health and nature by improving environmental legislation and enhancing the enforcement thereof.

#### **Introduction**

The second ELD Newsletter Edition provided an overview on the main outcomes of J&E National Environmental Liability Reports 2012 – highlighting and criticizing main weaknesses of liability regimes in various member states. The narrow scope, high severity thresholds, the lack of a persistent strict liability, of the principle of prevention and remediation, of public participation and financial security systems have been the main criticism with respect to national liability systems in place in addition to national ELD regimes. The current Newsletter Edition does a step forward and analyzes two elements stating an important condition for an effective environmental liability system. The importance of financial security systems and public participation in environmental liability matters will be shown on the basis of two case studies:

- Czech Republic: Toxic Compounds Leakage
- Spain: Aznalcóllar Case

#### **The Importance of Financial Security and Public Participation – Findings:**

##### **A) Czech Republic: Toxic Compounds Leakage**

A waste depositor stored oil contaminated soil without any permit since June 2005. Toxic compounds began to leak into the environment and destroy the surrounding flora. The case was handled by the Czech Environmental Inspectorate according to the Water Management Act and the Administrative Procedure Act<sup>1</sup>. The Czech Environmental Inspectorates' primary responsibility is the supervision of the enforcement of environmental

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<sup>1</sup> No. 500/2004 Coll

legislation. The Czech Environmental Inspectorate charged the polluter with castigatory and remediation measures.

In 2006 the polluter was fined (€ 200.000,--). Four years after, in 2010, response actions (basically: damage control, remediation plan and measures) had been imposed on the polluter. In the end the polluter (the enterprise) went bankrupt and its assets were liquidated, before responsive actions and penalty were enforced.

- As the Czech Water Management Act does not allow for public participation, no obligation for the authorities existed to take notifications and suggestions from the public into account not to mention rendering formal decisions on these notifications. As a result a waste disposal site permanently polluting soil and groundwater may exist for 5 years without any actions taken.
- The lack of mandatory financial security (insurance is compulsory only for operators with waste permits, and in this case it was an illegal discharge) led to the result, that again the state has to step in for damage remediation – the polluter pays principle does not effectively work in these cases.

#### **B) Spain: Aznalcóllar Case**

On the 25th of April 1998, a mining dam spill in Aznalcóllar (6.200 inhabitants) caused major damages to the Guadiamar River basin, close to the National Park “Coto de Doñana”. The damages included 4.634 hectares of soil damage in the river basin, 62 kilometres of a river course and 200 hectares of agricultural soil. The spill was similar to the Kolontár’s accident in Hungary in 2010. The regional Environmental Agency handled the case according to the Water Act and the Administrative Procedural Law carried out remediation measures and damage limitation (preventive measures).

The company Boliden Apirsa (the polluter) rejected its liability and was held liable according to the Water Act only after further legal proceedings have been initiated by the Ministry of Environment. A fine was imposed on the company (600.000 €) and the obligation to pay damage and remediation costs (more than 2.500.000 €) was established.

However, before the regional environmental authorities could enforce payment of the penalty and remediation costs, the daughter company (Boliden Apirsa) went bankrupt and it was impossible to seize the mother company in Sweden (Boliden AB). In the end the costs for decontamination and remediation were mainly borne by the Regional Government.

### **Conclusion:**

From the analyzed cases we can deduce two main messages – if the operator is not obliged to have financial security in place the cost risk always lies with the state – and consequently with society. There is definitely a need to establish financial security systems and oblige certain operators to participate in these systems. Secondly, the possibility for the public to notify, inform and require actions from the competent authorities in case of environmental damages or respective threats is important for the effectiveness of environmental liability systems. Environmental damage is affecting the society as a whole and shouldn't be the sole responsibility of one authority – often equipped with little financial and personal capacities – and the polluter himself. There is a need for effective participation and monitoring with regard to damage prevention and remediation.