



# Fighting Environmental Disasters

## Environmental Liability

## Czech Republic

## Case Study

***Justice and Environment 2017***

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### Case Study

**Pollution of Doubravka river by pesticide leakage and death of protected river crayfish.**

#### 1. Basic data

##### a. Location

territorial extension:

Doubravka river case: hundreds of crayfish died as far as 2,7 km from the source as a direct result of the water pollution caused by the operator.

##### b. Operator

Doubravka river case: crop and cattle farming and production of biogas electricity (green industry!) – an Annex III activity, since the operation of its installations is subject to the IPPC permit in pursuance of Council Directive 96/61/EC.

##### c. Authorities

Doubravka river case: Czech Environmental Inspectorate (administrative proceedings, first instance), Ministry of the Environment of the Czech Republic (administrative proceedings, appellate authority)

##### d. Other stakeholders

Doubravka river case: municipalities – however they did not submit any comments or observations as far as we are aware.

##### e. Time dimensions

Doubravka river case:

The damage happened in **March 2014** by a leakage of a pesticide called NURELLE.

The procedure based on water protection law started **in June 2014 and ended in June 2015** by a fine in the amount of CZK 500 000 (approx. EUR 18 500)

The proceedings based on nature protection law started **in March 2015 concluded in March 2016** by a fine in the amount of CZK 1 700 000 (approx. EUR 63 000) Thereafter the operator appealed to Ministry of the Environment of the Czech Republic which confirmed the preceding decision of Czech Environmental Inspectorate. The key issue was the effect on protected species.

Each of the proceedings took approx. 1 year since its initiation until appellate authority decision. The last known decision was rendered 2 years after the leakage. The operator paid both the fines without challenging them before an administrative court.

f. Type of legal basis

Doubravka river case: Administrative responsibility based on the aforementioned Water act and Protection of Nature and Landscape act – NOT the Environmental Damage Prevention and Remediation Act (although it was applicable). No criminal nor civil liability cases were pursued as far as we are concerned.

g. Results

Doubravka river case: The proceedings resulted in financial sanctions: the imposition of two fines in the total amount of CZK 2 200 000 (approx. EUR 80 000). Following the proceedings, the operator has allegedly taken sufficient measures to prevent the accident from occurring again. Neither primary, interim, complementary, nor compensatory remediation has been imposed by any of the administrative decision.

## 2. Expert analysis

Doubravka river case: An accident occurred at operator's site leading to leakage of pesticides (NURELLE) into the Doubravka river resulting in severe pollution of the river and death of hundreds of highly protected river crayfish and dozens or hundreds of other species. Measurements taken at the site and down the river and also of the river sediments showed presence of a chemical substance ("chlorpyrifos") which is highly toxic for water crustaceans and vertebrates and causes long-term water pollution, exceeding the legal limits for pollution 190 times (EQS being 0,1 µm/l). Some measures were taken by the operator, such as complete cleanup of the apparatus, cleanup of the drainpipes, polluted soil remediation, additional measurements. Even after implementing the measures control measurements undertaken 4 months after the initial leakage showed that EQS were still significantly exceeded for the pollutant.

### 3. Legal evaluation

#### a. Procedural legal issues

Doubravka river case: The burden of proof lies with the Inspectorate. The process was conducted under the Administrative Procedure Act as the general act and under the Water Act and Nature and Landscape Protection Act respectively. Regular administrative procedure was carried out looking to sanction delicts regulated in the respective acts themselves. Neither of the decisions mentioned Environmental Damage Prevention and Remediation Act nor ELD in any way.

#### b. Substantial legal issues

Doubravka river case: The key problem here is that the Environmental Damage Prevention and Remediation Act was not applied though it – in our view – should have been. Legal experts have various views on why the Act is not applied in the case – it can be either due to the definition of applicability in the act or due to the fact that remedial measures are not imposed pursuant to the Environmental Damage Prevention and Remediation Act if they are imposed pursuant to other act. The fine reflected the extent of the damages caused. Liability as such is considered to be objective (liability for the result), therefore no intent or negligence of the operator has to be proven by the authorities; it is the relationship between the consequence and the origin of the pollution that the authorities evaluate.

### 4. Public participation

Doubravka river case: Only in one of the proceedings there were other participants than the operator himself – and those were local municipalities. None of the participants ever submitted any comments or observations.

### 5. Financial security data

Doubravka river case: N/A.

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The Work Plan of J&E has received funding from the International Visegrad Fund through its Standard Grant funding scheme. The sole responsibility for the present document lies with the author and the International Visegrad Fund is not responsible for any use that may be made of the information contained therein.

