



Fighting Environmental Disasters

Environmental Liability

Hungary

Case Study

Justice and Environment 2017

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Leakage of unknown mixed chemicals to the soil and underground water.

1. Basic data

a. Location

In the outskirts of Kiskunhalas town, at Majsai street, an industrial storage facility with a storage house of 8x70 m filled in with wastes in cca. 80 %, before the storage house two piles of plastic and metal barrels of 7,5 m x 3,5 and 20x45 m size, both 3 m high. No labels on the barrels about their content, although some of them has danger labels on it. The whole facility is of cca. 5000 m² size, 60 % of its territory is used for storage of further materials.

b. Operator

The operator is the Bács Reál Ltd. that had leased the facility from a private person. No industrial activity took place on the facility, only storage. It is an Activity falling in the category of Point 2 of Annex III of the ELD.

c. Authorities

The lead authority was the Lower Tisza Region Environmental Inspectorate (later merged into the Csongrád County Governmental Office, while other authorities that contributed to the decision or acted parallel to the lead authority include the Catastrophe Prevention Authority, the town level Fire Department and the Csongrád County Chief Prosecutor's Office. Other aspects of the case were handled by the State Liquidator, the Kiskunhalas Town Police and the Kiskunhalas Criminal Court.

d. Other stakeholders

There were not established that any communities, individuals have yet suffered direct or indirect harm, the concerned municipalities remained passive in the case, while from the NGOs' side one national level environmental NGO, Greenpeace Hungary and two local NGOs, the Ironcrow Nature Protection Foundation and the Spear Association took place in the case.

e. Time dimensions

Description of the major events in time order, also important to establish the speed of the social-legal responses to the environmental incidences

2009. nov. 12. Mr. G. and Bács-Reál Environmental Ltd. concludes a lease contract for the Kiskunhalas, Majsai street facility for an unlimited term. The owner approves the activity of the lease in connection with handling hazardous waste (receiving, collecting and furthering) supposing that the company is going to acquire all the necessary permits.

2010. oct. 21. The environmental inspectorate holds a site survey and establishes that the company exceeds the frames of its hazardous waste handling permit, because it stores wastes longer than 4 weeks and the conditions of storage is not satisfying either. The inspectorate banned the further transport of hazardous wastes onto the facility.

2010. nov. 22. Repeated site survey by the inspectorate: establishes that the Company only partly eliminated the shortcomings revealed formerly by the authority.

2010. dec. 10. Bács-Reál Ltd. issues a document that underpinned that elimination of shortcomings has been perfected – the Inspectorate re-issued its hazardous waste permit.

2011. march 9. Repeated site survey by the Inspectorate. The Company is again in the infringement of the relevant waste management laws, it stores hazardous wastes with improper insulation and exceeded the storage deadline again. The authority obliged the Company to extend all the wastes on the site to an other facility that operates according to the rules and prove it with issuing the contracts and other documents. This decision was not implemented by the Company, therefore the Inspectorate issued two further decisions on fining. All of the decisions were accepted by the Company but neither were they implemented nor the fines were paid.

2011. apr. 21. The Inspectorate issues a warning to the Company.

2011. may 11. The Inspectorate bans the activity of the Company insofar it is contrary to its permits.

2011. jun. 22. Mr. G., the owner of the facility issues a complaint to the Inspectorate with attached photos: no carrying away of wastes happened for several months, the amount of them keeps growing and far exceeds the amount that could be stored safely.

2011. jul. 4. The Inspectorate holds a site survey without preliminary notice. They haven't found anyone on the facility. In writing the Company informs the authority that everyone was on vacation.

2011. jul. 19. Repeated site survey finds ways of storage, handling and transporting different from the permitted ones. The authority also finds oil spills. No documentation could be produced to the Inspectorate by the Company (no electric town already, no paper versions).

2011. aug. 11. Mr. G. initiates at the Court the bankruptcy of the Bács-Reál Ltd. referring to the accumulated debts of the Company (no lease payment and no payment of electric town).

2011. sept. 15. The Court orders the start of the bankruptcy procedure.

2011. sept. 15. The Inspectorate informs the Police Headquarter about the case.

2011. sept. 26. Repeated site survey. Repealing the waste management permit, the authority in its decision establishes that the estimated amount of wastes on the facility is between 1100-1500 ton. Leakages are also detected, as well as odour of several solvents. Unpacked health waste, injections were also found. The Inspectorate brought a decision on cleaning up the facility on the expenses of the user of the site and called the Company to wire the money for it. The liquidator took part in the site survey procedure.

2011. nov. 9. Overall fire safety examination on the site by the town Fire Department together with the regional catastrophe prevention – found large amount of stored wastes with no proper safety equipment such as a fire estinguiser.

2011. nov. 14. The Inspectorate summons the Liquidator to a site trial.

2011. nov. 16. Kiskunhalas Town Police hears Mr.G. as a witness.

2011. nov. 28. The Inspectorate holds site survey and establishes that as time goes the environmental hazards grow, especially wintertime (e.g. some liquids in the barrels might freeze and squeeze out the holders). The authority informed the Liquidator about the circumstances of the case. The Liquidator informed the Inspectorate that the Company had no assets.

2011. dec. 27. Kiskunhalas Town Police surveys the house of the defender (the owner of the Bács-Reál Ltd.

2012. jan. 13. Kiskunhalasi Town Police seizes the lorry of the Company and announces the criminal procedure because of the crime of defalcation.

2012. may 11. The Inspectorate brings a decision and obliges the Company to issue an environmental survey according to the liquidation laws within 30 days, unless a 1 million HUF fine will be determined against it. The reasoning of the decision establishes the cost of clean up to 70 million HUF, counting with a 70 HUF/kg price of hazardous waste handling. Also obliges the Company to deposit a safety sum, but establishes that only 3 million HUF could be sized from it.

2013. jan. 24. The Kiskunhalasi Town court sentences the owner/manager of Bács-Reál Ltd. Mr. H. to suspended incarceration because the crime of infringement of hazardous waste storage law. The reasoning part of the sentence points out that the defendant's profession is environmental technologist and he was punished because of the same crime in 2006. Also the Company got permits for waste management, including hazardous waste, it infringed the provisions of the permit in a multiple way, especially in respect to the allowed time of storage. The criminal court also took into consideration that the defendant was warned by the Inspectorate several times.

2013. jul. 26. The County Court establishes that the Bács-Reál Ltd. ceased to exist because of bankruptcy.

2013. aug. 22. The Inspectorate informs the original owner of the Majsai street facility, Mr. G that the residual responsibility to clean up the facility burdens him and calls him to report to the authority about the methodology of clean up within 15 days.

2013. sept. 7. Prof B. from the P. University prepares the study on the loci of responsibility in the given case. The owner of the land can only be obliged to clean up the facility if the user of it is not known or unable to perform his responsibility. The study notes that the multiple permits and weak enforcement measures, including the hesitating behaviour in the liquidation procedure from the side of the Inspectorate has contributed to the environmentally dangerous situation.

2013. nov. 26. The Inspectorate calls Mr. G. to start the clean up measures immediately.

2013. nov. 26. The Inspectorate brings a decision in which obliges Mr. H. to clean up the facility, based on his written declaration on the lease contract according to which he undertakes a security responsibility for the damages in case the Company is unable to handle them. In the reasoning part the decision also refers to the arguments from Prof. B.

2014. apr. 29. Second instance decision of the Chief Inspectorate that reinforces the first instance decision of the Inspectorate in which it obliged Mr. H. for clean up. In the reasoning part it adds to the former arguments that Mr. H was found guilty in an environmental crime concerning the same facility.

2014. apr. 29. The Chief Inspectorate annuls the decision that obliged Mr. G. to clean up the facility.

2014. dec. 8. Mr. G. writes a letter to the Inspectorate, asking it to clean up the facility on the risk and expenses of the responsible Company or its owner, Mr. H.

2015. jun. 9. The Csongrád County Governmental Office, Catastrophe Prevention Directorate takes water samples from the nearby water flow (Alsószállási csatorna) and also drills out soil samples from the site of the facility, furthermore, from the same place takes underground water sample, too, by a vacuum suction-pump. The samples were taken to the official laboratories of the Office, but no data was served to the Parties about them. The protocol of sampling also contains statements that refer to the unprotected status of the hazardous wastes stored on the facility and that it endangers the soil and the broader environment of it.

2015. jun. 24. Dr. B, head of the environmental department at the Governmental Office informs Mr. G. that there were no excess of pollution (immission) thresholds found in the samples collected in jun. 9.

2016. jun. Chemists of Greenpeace Hungary have examined 14 metal components in the soil and in case of 9 of them they found an excess of the legal thresholds, in one case in a 9 times higher value. In addition to that a nearby Natura 2000 area the contamination data were similar with residual used paints and solvents, abandoned, rusty barrels and healthcare wastes were found. Greenpeace has criticized the Hungarian legal regulations, because they allow the polluter to sneak out from under the responsibility averting that in essence to the general taxpayers.

f. Type of legal basis

fa) ELD type administrative law

Governmental Decree No. 90/2007 Korm on averting environmental damages

- Article 2(4) on obliging the user of the environment to clean up the facility
- Articles 3(1) and 17(1) on the authority's responsibility to take measures instead of the user of the environment

fb) other environmental administrative legal provisions applied in the procedure

Governmental Decree No. 98/2001. Korm on handling hazardous wastes

Act CLXXXV of 2012 on waste management (Ht.)

Art. 31 on responsibility for pollution

Art. 61(3) on the responsibility of the owner of the land in cases when the user of the environment is unable to remedy of his/her person is unknown

Art. 61(5) on the case when the owner of the land is freed from the responsibility by naming the person of direct responsibility and proves his responsibility

Act LIII of 1995 (Environmental Code)

Art. 102(2) the similar provision as Art 61(5) of Ht.

fc) other administrative laws used

Act CXL of 2004 on General Administrative Procedure Act

Art. 61(2) and 134 d) on procedural fines up to 500.000 HUF (1500 Euro)

Art. 126(1), Art. 127 and 134, Point a) on the possibility that the authority can perform the activity (clean up) on the risk and expenses of the obliged person

fd) interconnection with other (civil, criminal etc.) kinds of responsibilities

fda) Bankruptcy laws

Act LXIX of 1991 on Bankruptcy (Cstv.)

Art. 27(2) on establishing inability for paying due debts

Governmental Decree 106/1995 Korm. on the environmental requirements in liquidation procedures

Art. 4(2) on establishing the fact of endangering the environment and ordering environmental status examination

Annex 2 on the elements of the environmental status examination

fdb) Criminal law

Act C of 2012 on Criminal Code (Btk.)

Art. 280/A(1) Point b) on crime of infringement of the order of waste management committed in connection with hazardous wastes

g. Results

No prevention and remediation measurements have taken place so far, neither primary, interim, complementary or compensatory ones.

2. Expert analysis

If expert documents, statements are available (or from decisions can be deducted):

- what kind of materials were involved:

the content of the barrels is unknown – however, unknown and mixed chemicals shall be considered as hazardous waste until it is proven that they have no traits of hazard to the environment or human health.

- what kind of procedures led to the incident;

a supposedly criminal behaviour from the onset: the owner of the Company formed the firm and developed its strategy in order to gather a large pile of hazardous waste (collect the high amount of fee for their handling) and then abandon it on a leased facility.

- the nature of environmental threats and damages;

unknown mixed chemicals leak out to the soil and underground water, dried out materials might also form dangerous dust.

- prospects of prevention and remediation

time factor is decisive: at the time being a very small part of the large amount of liquid wastes leaked out, however, as experts pointed out on the authority side as well as from the NGOs exposed to a serious winter whether (fortunately the last couple of winters were exceptionally mild) could result in a quick deterioration. Costs of remedy might multiple if the authorities fail to take measures.

- actual results of the process from expert angle

no research has been done in this aspect yet.

3. Legal evaluation

a. Procedural legal issues

- role and responsibility of expert authorities and experts

The environmental authority used its own experts during the several site surveys, also the catastrophe prevention authority did so. Only the latter took formal samples and sent them to the environmental authority that did not give detailed data further to the concerned parties. An independent NGO measuring has found significant excess of threshold in the case of 9 materials.

- expedited processes or regular ones

Just the opposite: the environmental authority seemed to be very slow and indecisive in the case, although, as we mentioned, the time factor plays a considerable role in this case.

- burden of proof

The authorities kept the burden of proof on their side, as routinely happens in administrative legal cases.

- reasoning of the decision

Some of the decisions were schematically and laconically reasoned, while the decision of the major decisions of the environmental authority in which it obliged first Mr. H, then in an other decision Mr. G. were carefully reasoned in proper details.

- several kinds of cost and cost bearing

The cost of site surveys, sample taking, laboratory analyses were born by the respective authorities.

- remedies and their legal effects

The second instance environmental authority usually consented with the first instance decisions

b. Substantial legal issues

- problems with definitions, if any – not found

- calculation of the damage and the cost of preventive and/or restoration measures – not found

- application and scope of strict liability

formally/silently was used in respect to the polluter, Mr. H, i. e. the authority did not mention his negligence or will to cause dangerous situation, but only underlined the causal chain between his failure to handle the wastes properly and the dangerous situation. When the authority tried to shift the obligation to the land owner as secondary responsible person the liability *per definitionem* could not be other than strict, because Mr. G as a land owner that leased his real estate to a person had no intent or negligence in connection with the dangerous result. In the lease contract Mr. G included that Mr. H has the proper professional background for handling hazardous and other wastes and that he would acquire all the necessary permit for his waste management activity.

- joint and several liability or shared one

Mr. G's responsibility would have been joint and several with Mr. H, but he could use legal arguments that freed him from the responsibility to clean up the facility, namely, he could prove that the activity of Mr. H was fully the reason of the dangerous situation.

- full or limited liability – according to the aims of the decisions of the Inspectorate both Mr. H., and thereafter Mr. G would have been burdened with full liability, including the costs of the administrative procedures, too.

4. Public participation

a. The role of members and/or organisations of the public played in initiating the procedure – large national NGO (Greenpeace Hungary) and two local NGOs started to deal with the case only in 2016.

b. Notification of the public (timeliness, information content, ways of notification etc.) – no notification happened, the catastrophe prevention authority did not see any immediate threats that would have made a notification of at least the municipality necessary.

c. Extent of participation (number of persons and organisations, substantial suggestions made etc.) – see above

d. Due consideration of the public input – the appearing of the three NGOs in the case has triggered off some local and national level attention, but the further effect of their actions – especially that of the alternative sample taking and chemical evaluation of that – is still premature to evaluate.

5. Financial security data

The financial background of the responsible parties and other arrangements that allowed or rather prohibited the full coverage of the emerging costs: the primarily responsible Company went bankrupt. Even if the bankruptcy procedure was initiated formally by the main debtor (Mr. G), it was obvious in this case that Mr. H, the owner of the Company used the *corporate veil* to collect the waste management fees from the original owners/producers of wastes and then abandon them without bearing any financial responsibility. In other words, financial security measures were failed to be made on purpose.

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