



Fighting Environmental Disasters

Environmental Liability

Comparison of Case Studies

Justice and Environment 2017

a Udolní 33, 602 00, Brno, CZ
t/f 36 1 3228462 / 36 1 4130297
fb /justiceandenvironment

e info@justiceandenvironment.org
w www.justiceandenvironment.org
tw JustEnviNet

Fighting Environmental Disasters

Environmental Liability

Comparison of Case Studies

In 2016, Justice and Environment received a Standard Grant from the International Visegrad Fund. The following cases were analysed within the frames of the project:

- pollution of Doubravka river by pesticide leakage and death of protected river crayfish (Czech Republic)
- Błota Brudzewickie – partially drained peatlands and meadows in Natura 2000 areas (Poland)
- Kiskunhalas town, abandoned industrial storage facility (Hungary)
- waste water spill into the river Trnávka (Slovakia)

In all participating countries we have carefully selected the cases: our leading concern was to select the most informative and the most typical ones according to the several years (decades) of experiences of our researchers in the practice of environmental law. We have examined the factual, expert and legal aspects of our cases. We do think that we could deduct important conclusions from these cases under almost all the points below.

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.

Błota Brudzewickie:

A few hundred hectares of partially drained peatlands and meadows lying within two Natura 2000 areas: Dolina Dolnej Pilicy and Dolina Pilicy in central Poland, Mazowieckie and Łódzkie voivodships.

Kiskunhalas:

In the outskirt of Kiskunhalas town, 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.

Trnávka:

At the waste water treatment plant located in village of Zeleneč there was a leakage of waste water into the river Trnávka (Western region of Slovakia). This leakage affected principally a section of the river between villages Zeleneč and Hoste, 10 km long.

Note: Our cases are typically middle range ones where the territorial extension is not the main determining factor of the environmental danger, but contributes to it significantly.

b. Operator

Doubravka river case:

Several agents dealing with crop and cattle farming and production of biogas electritown (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.

Błota Brudzewickie:

Municipality water law companies of municipalities Odrzywół and Poświętne (green industry!) – It is not an Annex III activity, the operators responsibility stems from ELD as implemented into the Polish law.

Kiskunhalas:

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.

Trnávka:

The operator of the waste water treatment plant in Zeleneč is Trnava Water Managment Company. This activity falls under Annex III of the directive.

Note: The operators show a colourful picture with some typical traits: waste management, including fluid waste treatment counts to be a very important environmental protection activity. Also alternative energy sources such as biogas production, wind mills etc. represent important sustainable development features. In the same time management of private and even municipality waste management facilities and also alternative energy production facilities oftentimes consider their environmental position as a safe-conduct to overlook the environmental standards.

c. Authorities

Doubravka river case:

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

Błota Brudzewickie:

Regional Director for Environmental Protection in Warsaw (first instance) General Director for Environmental Protection (second instance)

Kiskunhalas:

Lower Tisza Region Environmental Inspectorate, later merged into the Csongrád County Governmental Office (lead authority), 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.

Trnávka:

Slovak Environmental Inspection in Nitra was the leading authority in this case, the District office, department of protection of the environment in Trnava also assessed the case. District police force unit in Zavar was authority who assessed the case under criminal law. Slovak water management enterprise who undertook measurements of water quality, municipality of the village Majcichov, who contacted Inspection and the District directorate of Fire and Rescue Corps in Trnava took part in the case, too.

Note: While in two countries the case was handled by a single authority, in the other two, we had apart from the environmental authority other authorities, too, such as catastrophe prevention, fire department, state liquidator, water management authority (or an enterprise that performs certain authority functions) and municipality authorities also had important functions. We did not even see a clear-cut leading, organising function from the side of the environmental authorities in these cases. Where the responsibility of the polluter showed criminal elements, as well, participation of criminal authorities (police, prosecutors, criminal courts) were also indispensable.

d. Other stakeholders

Doubravka river case:

Municipalities – however they did not submit any comments or observations as far as we are aware.

Błota Brudzewickie:

Ornithological Society of Mazowieckie and Świętokrzyskie.

Kiskunhalas:

Mr. G., the owner of the storage facility, Mr. H., the owner of the operator company, **Greenpeace Hungary and two local NGOs, the Ironcrow Nature Protection Foundation and the Spear Association.**

Trnávka:

Communities, individuals that suffered direct or indirect harm, municipalities, NGOs such as local fishermen associated under local municipal fishermen's union. While 5-6 municipalities between Zeleneč and Hoste were affected but they did not take part in the proceedings.

Note: NGOs and municipalities are natural stakeholders whose participation would be important in the ELD cases. As concerns the municipalities, their participation seems to be not quite typical, in no cases we examined here they played a role initiating or otherwise determining the course of the procedures. Most probably lack of knowledge is the major factor in this low level activity, but also the pressure from the community to act is evaluated too low. NGOs play an active role in almost all of the revealed ELD cases, but this shall not be interpreted as a sign of satisfying preparedness of our civil communities to reveal and manage environmental damage cases. Considering that the number of cases in the examined countries where NGOs played decisive role is actually quite low, their expertise in ELD matters cannot be called high or even medium level. This is especially true in respect of the local, “grassroots” NGOs and local communities without being organised into a formal civil organisation.

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.

Błota Brudzewickie:

Request for action was submitted by the Ornithological Society in **May 2010**. In **January 2011** first instance decision was brought imposing the obligation to take preventive and remedial actions. The operators appealed against it in **February 2011**. In **July 2011** the second instance authority remanded the decision. In **November 2011** the first instance authority issued a second decision again imposing the obligation to take preventive and remedial actions. The operators appealed again. In **March 2012** the first instance decision was remanded again. In **September 2012** a third decision was issued imposing the obligation to take preventive and remedial actions. We have no information on the further course of the proceedings, however, there are strong indications that the decision from 2012 was remanded again and that the proceedings lasted at least **till 2014**.

Kiskunhalas:

(*administrative law history*) Mr. G. and Bács-Reál Environmental Ltd. concludes a lease contract for the Kiskunhalas, Majsai street facility for an unlimited term in **2009 Nov. 12**. The environmental authority holds site visits repeatedly in **2010 Oct. 21, 2010 Nov. 22, 2011 March 9, 2011 Jul 4** (this time without preliminary notice), **2011 July 19, 2011 Sept. 26, 2011 Nov. 9** (a fire safety examination by the Town Fire Department), **2011 Nov. 28, 2015 June 9**. (the Catastrophe Prevention Directorate took water samples from the nearby water flow) **2016 June (by chemists of Greenpeace Hungary)**.

The site surveys by the environmental authority established that the company stores wastes longer than permitted, in the last surveys the authority also found oil spills and that there is no registration of wastes at the facility, not even electritown anymore. The very last survey established that winter weather might cause serious disaster at the facility. The catastrophe prevention authority established that the unprotected status of the hazardous wastes stored on the facility and that it endangers the soil and the broader environment of it, while the samples taken by the NGO turned out to exceed the legal standards considerably.

As a result of site surveys, the Inspectorate issued several warnings, banned the further transport of hazardous wastes onto the facility and obliges the operator to extend all the wastes to an other facility that operates according to the rules and prove it with issuing the contracts and other documents. However these decisions were not implemented by the Company, therefore the Inspectorate issued two decisions on fining it. All of the decisions were accepted by the Company but neither were they implemented nor the fines were paid. In **2011 Sept. 15** the Inspectorate informed the Police Headquarter about the case. In **2011 Sept. 26** 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 informed the Inspectorate that no money is available at the Company under bankruptcy.

(*company law history*) In **2011 June 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. In **2011 Aug. 11** Mr. G. initiated at the Court the bankruptcy of the Bács-Reál Ltd. referring to the accumulated debts of the Company. In **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. In **2013 July 26** the County Court establishes that the Bács-Reál Ltd. ceased to exist because of bankruptcy.

(*criminal law history*) In **2011 Nov. 16** the Kiskunhalas Town Police hears Mr.G. as a witness. In **2011 Dec. 27** the Police surveys the house of the defender (Mr. H., the owner of the Bács-Reál Ltd., the operator company). In **2012 Jan. 13** the Police seizes the lorry of the Company and announces the criminal procedure because of the crime of defalcation. In **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.

Trnávka:

The damage was announced to the Slovak Inspection of the Environment on **3 April 2014** at 6.39 pm through District directorate of Fire and Rescue Corps in Trnava who received information from the mayor of the municipality Majcichov. Notification on the accident was also filed on 3th of April 2014 via Information portal on prevention and remediation of environmental damages by the operator, **2 hours after the accident.**

Discharge of waste water into river Trnávka happened in consequence of a technical maintenance on the plant and during the period where operator was given permission to discharge higher quantities of waste water than legally set thresholds. This **lasted approximately 2 weeks.** In reaction to the call Slovak Inspection of the Environment received, an employee of the Slovak water management was sent to investigate the accident. He monitored the affected river in different places and established the death of fish. After receiving this information the same day the Inspection itself visited the contaminated place. Inspection on the basis of the Act on water protection ordered to operator to immediately stop to contaminate. They stopped to pump waste water into the river **3 of April 2016** at 8.30pm.

Day after site monitoring was carried out by the Inspection who stated that operator was not contaminating anymore.

At the same time few days after the accident, the Slovak Agency of Environment consulted also the Slovak National authority for the protection of the Nature whether some areas under European protection which are situated in the lower parts of the river were affected. Concretely there are wetlands in the lower section of the river but State Protection of the Nature rejected the suspicion of contamination.

In **summer 2014** several associations among them the Union of fishermen led discussion with competent water management authorities on possible reconstruction of the waste water treatment plant in Zeleneč. However since then no more was said or done in this respect and case was closed.

Note: Description of the major events in time order, also important to establish the speed of the social-legal responses to the environmental incidences. The picture we draw here is despairing. While revealing the damage and stopping further pollution (when relevant) takes place quickly or rather immediately, the administrative procedure for realisation of the responsibility and cleaning up took 1 year, 3 years, 7 years and was not even seen in the four examined cases. What is missing from our practice is *inter alia*: expedited procedure; immediate execution of the administrative decisions, including effective implementation of the decision by the authority itself on the expenses of the polluter; piercing the corporate veil in order to prevent the polluters from going bankrupt and free themselves from any financial responsibility. Contrary to them, in each cases we sadly learned that a medium serious environmental catastrophe situation could stay unrepaired for years, hot summers and cold winters can further ruin the concerned waters, soils and nature for long. Even criminal law is helpless in such situation when the polluters calculate with it and decide to take the risk anyway. As the old saying goes: criminal law is effective for everyone, except criminals.

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.

Błota Brudzewickie:

The proceedings were carried out under the 2007 act on the prevention and remedying of environmental damage that implements the ELD into the Polish law (hereinafter: ELD act). There was no civil nor criminal procedure.

Kiskunhalas:

Several ELD type administrative laws (individual general, individual nature, water protection ones build in into underground and surface water protection laws. Pre-existing laws, including general environmental code, general waste management and hazardous wastes laws. General Administrative Procedure Act. Other laws such as relevant provisions of civil, criminal and bankruptcy laws and liquidation procedures (with environmental aspects, too).

Trnávka:

The operator submitted the notification through the information system established under Act no. 359/2007 Coll. on prevention and remediation of environmental damage. Following proceedings by the Inspector were led under regime of the Act no. 364/2004 Coll. on protection of water corps. This Act regulates “Exceptional deterioration of water” so the situation where a sudden unexpected and considerable contamination of water corps occurs and under this regime was led the proceeding. Under this regime the competent authority to act and to lead the proceeding is the Slovak Inspection of Environment.

Note:

Similarly to the question about authorities, the applied laws show a very scattered pattern. ELD type administrative and other administrative legal provisions both were applied in the procedure, in some interconnection with other (civil, criminal etc.) kinds of laws on different responsibilities that can be cumulated with the administrative responsibility. The relevant laws can be divided into two groups: one that was created directly to harmonize the national law with ELD and the other that had existed before ELD and remained independent from it in its content and procedure. Naturally, administrative procedural law had to be used in every countries.

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.

Błota Brudzewickie:

Under the decision of September 2012 the operators were obliged to undertake remedial actions. The authority did not specify the type of remediation, however, it can be deduced that there is a primary one, a complementary one and a compensatory one, in this order: obligation to reconstruct weirs on drainage ditches; obligation to install safeguards to prevent unauthorized persons to access the weirs and other hydraulic structures on the drainage ditches; and prohibition to perform any desilting works on the drainage ditches in the period of 15 years to allow for a natural succession of species and habitats.

Kiskunhalas:

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

Trnávka:

Slovak Inspection of Environment in this case required the operator to stop to contaminate and the day after they verified it with measurements of the water quality. Afterwards no more measures were adopted.

Local fishermen claim that this accident was not first and either last. According to them competent authorities do not take adequate and sufficient steps to prevent these accidents. Except for financial sanctions authorities do not require from operators to adopt other measures which would be preventive and also fail to monitor the operation of this plant.

After contamination fishermen turned to the Inspection in order to request a cleaning of sediments left in the river after the contamination however no such cleaning happened. Moreover discharges continue to happen.

Note: An effective halting the polluting activity could be experienced in the examined cases, that could serve as prevention of further damages was successful, but and remediation did not take place. Therefore, primary, interim, complementary and compensatory remediation, as prescribed in Annex II of ELD did not happen either. Actually, it was ordered by the authorities in two cases, but was not successfully implemented, while in the other two cases the authorities did not even attempted to enforce their decisions.

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.

Błota Brudzewickie:

Both levels of the administrative bodies are highly specialized in the area of environmental protection, hiring their own experts and possessing their own laboratories etc. therefore in most cases they do not need to hire any external experts. The operators undertook engineering works within the area, including desilting of drainage ditches and removing existing weirs. As a result, the rate of drainage was substantially increased, leading to the destruction of habitats of several protected species, in 2009 their numbers were significantly lowered and some of them disappeared completely. According to the first instant authority, the operators conducted engineering works without taking into account the specific environmental conditions of the protected area.

Kiskunhalas:

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. Earlier the authorities declared no pollution, that leaves some doubts in the mirror of Greenpeace results, even if the authorities took their samples earlier in the case. The exact content of the barrels is unknown even after 6 years – the NGO activists were not allowed inside facility. As a minimum from the onset, hazard to the environment or human health should have been established, because when unknown mixed chemicals leak out to the soil and underground water it is definitely within the borders of the term significant danger, moreover, dried out materials might also form dangerous dust. The time factor is decisive in this case: 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.

Trnávka

River Trnávka got contaminated with waste water which led to massive death of fish and other riverine species. Even though water quality check 24h after accident concluded that the river was without contamination, local fishermen claim there significant amount of polluting materials were still left in the sediments.

From the perspective of a member of Union of fishermen the authorities failed to act in this case adequately because did not require from operator any remediation or preventive measures for future but only focused on financial sanctions.

Note: In most of cases various expert documents, statements were available (or from the available decisions they could be deducted): usually we know what kind of materials were involved; what kind of procedures led to the incident; the nature of environmental threats and damages are more or less clear for the stakeholders; prospects of prevention and remediation might be established. Yet, actual results of the process from expert angle seem to be very poor. It deems that the authorities and the economic decision-makers tend to overlook the expert opinions or do not take them serious. Unfortunately, only the largest NGOs with international background can allow themselves to run parallel expert examinations at priority contaminated sites. In the mirror of the Hungarian case supported by the experience of the J&E lawyers instutionalized and budgeted procedures should be established in order to make it possible in several opportunities for professional mainstream NGOs or in certain cases local grassroots NGOs, too.

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.

Błota Brudzewickie:

The proceedings were led under the provisions of the Code of Administrative Procedure and the Act on the prevention and remedying of environmental damage (implementing the ELD). Burden of proof lied on the side of the authority. Reasoning of the decision was comprehensive, taking into account that it is a third decision issued in the same case. A specific defect of the Polish Administrative Procedure is clearly visible – the proceedings may last indefinitely, rotated between the first and second instance authorities. The first instance authority issued decisions imposing remedial actions whereas the higher authority remanded them due to some procedural flaws, as well as due to the differences in the interpretation of a relatively new law. This vicious cycle could have been stopped

by the stakeholder – the Ornithological Society, if it had appealed against the remanding decision of the second instance authority to the administrative court. However, in this case the Society was passive, and the operators did not react as the lack of final decision was to their advantage.

Kiskunhalas:

The following procedural legal problems were raised and answered in a way:

- the 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 happened: 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

Trnávka

The operator did not deny its responsibility and informed the competent authorities about the accident and was ready to financially compensate the damage caused by the accident.

Local fishermen also requested compensation for the damage the death of fish caused to them given that it was the Union of fishermen who invested money in fish restocking in the river. They claim that their investment was of 3000 euros meanwhile the operator paid them 500 euros.

Burden of proof within the administrative proceeding led according to Water Act lays on the competent authority, so the Slovak Inspection of the Environment.

As the measurements proved the contamination of the river, Inspection imposed a fine of 3000 euros on the operator.

Note: As concerns the role and responsibility of expert authorities and experts we have seen from the cases that their role is decisive and needs to be controlled from several angles (such as independent experts, legal remedies, chambers of several kinds of experts and detailed, professional reasoning of the decisions). It was hinted already, too, that time factor is a key issue in ELD cases, therefore expedited procedures should take place rather than following the regular time frames of an administrative procedure. Contrary to that, our experiences say that the Polish case is rather the rule than the exemption: several (sometimes uncounted) rounds of legal remedies again and again repelling the first instance administrative decisions delay the remedy of the pollution in an unacceptable way.

While in the cases the administrative authorities considered that burden of proof lies on their shoulder, J&E experts are convinced that the high stakes at the environmental liability cases would demand at least a partial shift of this burden to the side of the polluters. A somewhat similar logic was experienced in connection with several kinds of costs and cost bearing: the administrative bodies followed the regular paths of their respective administrative procedural codes and therefore the State carried almost all costs in the examined cases, although one of the major motivation of the ELD legislations were that the most dangerous environmental polluters should not shift the financial risks of their activities to the general taxpayers.

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.

Błota Brudzewickie:

The obligation was imposed on the operators in accordance with the principle of joint and several liability. As the operators' activity is not an Annex III one, their liability was fault-based. The problems that occurred (and resulted in several remanding decisions of the higher authority) stemmed mostly from the fact that the ELD Act was a relatively new law, thus there was almost no jurisprudence, therefore, it was difficult for the authorities involved to properly interpret its provisions. Currently a new case law is emerging and such situations should become rarer. Another problem was to properly assess to what extent the damage occurred before and after the new Act came into force, as the operators' activities lasted many years. The damage – destruction of protected habitats and reduction of the population of protected species – progressed gradually. It is partly a matter of proper factual analysis, as well as a need of case law that will help the authorities to assess the legal aspects correctly. The emerging case law (including a first significant judgment of the Supreme Administrative Court) stipulates that the protection of environment and remediation of

environmental damage is a priority, therefore the authorities have a relatively wide discretion when selecting measures to be imposed on the liable party.

Kiskunhalas:

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 that entailed with 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. 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 dangerous situation was fully due to the activity of Mr. H. 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.

Trnávka:

Apart from the legal problems mentioned at earlier points, there only substantial legal problem emerged in the case in connection with calculation of damage given that affected fauna fled to lower rivers.

Note: Generally speaking, while procedural problems overwhelmed the examined cases, substantial legal problems seldom emerged, most probably because this would have been premature, a bolstering legal practice have not emerged yet in any of the four countries. Therefore we have not come across with problems with the relevant definitions or any other problems of interpretation of ELD and their national equivalents. However, sporadically we have already met some problems in connection with calculation of the damage and the cost of preventive and/or restoration measures; joint and several liability or shared one; full or limited liability. Application and scope of strict liability seemed to be clear for the authorities – in principle. However, as we have witnessed, while the authorities formally acknowledged strict liability, actually they followed the old rules of their general administrative procedural laws and strived to prove all the traits of the cases on their own, beyond reasonable proof. If their results were not convincing enough, the second instance administrative bodies did not hesitate to repeal their decisions.

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.

Błota Brudzewickie:

The proceedings were initiated due to the NGO's (Ornithological Society's) request for action. As stipulated by the ELD Act the Society was granted rights of a party in the proceedings. It was informed about the course of the proceedings and received all decisions. However, the society was passive after filing the request, though could actively participate, eg. by filing a complaint against the remanding decision to the administrative court. No costs were incurred on the stakeholder requesting for action.

Kiskunhalas:

Members and/or organisations of the public played no role in initiating the procedure – a large national NGO (Greenpeace Hungary) and two local NGOs started to deal with the case only in 2016. Beforehand the authorities failed to notify any members or organisations of the public most probably in a fear of they would raise new points and need for actions that might be too demanding for the authorities in serious lack of resources. Speaking about due consideration of the public input might be even premature – 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 – cannot yet be seen.

Trnávka:

There was participation of local Union of fishermen but only on a very limited way were they were trying to push authorities to act and adopt appropriate measures and discuss possible reconstruction of the plant. However they did not undertake any role in administrative proceedings where they could effectively claim their rights.

Note: As we referred to it earlier, generally, taking larger number of ELD cases into consideration the role of members and/or organisations of the public played in initiating the procedure is pretty modest. Notification of the public seldom takes place, local communities and interested NGOs receive information with considerable delay, the content of the official information is poor, and the ways of notification is not helping meaningful public participation in these cases. We restate also that without systematic capatown building programs, even the professional NGOs will be unable to produce useful public input in the cases.

5. Financial security data

Doubravka river case:

N/A

Błota Brudzewickie:

N/A

Kiskunhalas:

The financial background of the responsible parties and other arrangements that allowed or rather prohibited the full coverage of the emerging costs looks in this case were the weakest point on which the successful arrangement of the pollution failed. 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 in this case directly, on purpose.

Trnávka:

The financial background of the responsible parties and other arrangements that allowed the full coverage of the emerging costs was satisfying, because according to Slovak Agency of the Environment the operator had a financial security for cases of environmental damages.

Note: Unfortunately, only two cases out of the four could proceed so far that necessity of paying the cost by the polluter emerged. In one of them the polluter's fraud prevented any financial responsibility from his side, while the environmental and other relevant authorities were not in the proper financial position to cover the necessary costs before the effects of the environmental emergency situation escalate.

Contact information:

name: Sandor Fulop
organization: J&E
address: Garay u. 29-31., Budapest, Hungary, 1076
tel/fax: +36 1 3228462, +36 1 4130297
e-mail: info@justiceandenvironment.org
web: www.justiceandenvironment.org

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.

