

EUFJE Conference 2015

Protection of the environment through criminal law: the implementation and application of the Eco-crime Directive in the EU Member States

Bolzano, 30 and 31 October 2015

REPORT ON HUNGARY

1/ ***Who can be held criminally liable in your country?***

a/ Natural persons only or natural as well as legal persons?

Natural persons, as well as legal persons.

In the latter case: does their criminal liability extent to all types of crimes or only to very specific crimes?

Only to crimes committed intentionally.

Also: under which circumstances can they be held criminally liable? In particular: is there a precondition requiring a conviction or particular result of a criminal proceeding against a natural person? Are the hypotheses mentioned in art. 6.1 and 6.2 of the Eco-crime Directive covered?

In case of committing an intentional crime, legal measures can be applied against legal persons, if the offense was committed for gaining an advantage, or the offense was committed by using a legal person and the offense was committed by a person who has leading role in the legal person. The hypotheses mentioned in Article 6.1 of the Eco-crime Directive is covered, the Article 6.2 less.

b/ What about persons inciting, aiding and abetting the actual perpetrators of a crime?

Persons inciting, aiding and abetting the perpetrators of a crime can be punished according to the general rules of the Hungarian Criminal Code, which declares, that the item of punishment established for the perpetrators shall also be applied for the accomplices.

2/ Are the Art. 3 offences criminal offences in your country?

Do you know about gaps in the transposition of Art. 3 of the directive (e.g.: not always serious negligence criminalized, one of the Art. 3 offences only partially transposed)?

According to the Article 3. point d) of the Eco-crime Directive, Member States shall ensure, that the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants constitutes a criminal offence. In Hungary, if someone operates a nuclear facility without permission or statutory authorization, qualifies the abuse of the operation of a nuclear facility. But if the hazardous material or dangerous activity is not nuclear, then under Hungarian law it does not constitute a crime in connection with illegal operation. According to the official arguing of the Hungarian Criminal Code, this is due to the hazardous substance itself is not a specified term, it is unclear what comes under this definition, what legal rules are applicable.

3/ How were the Art. 3 offences implemented?

a/ Only in the criminal code, only as parts of environmental laws or combining both ways?

Only in the Hungarian Criminal Code.

b/ Did the legislator choose for a “copy paste” or not?

The implementation is not only through a “copy paste” way.

c/ All but one of the Art. 3 offences are defined by specific circumstances, notably specific results or risks of results that need to be fulfilled:

- Four conducts need to be considered a criminal offence if “[causing] or (...) likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants” (art. 3.a, 3b, 3.d and 3.e)
- Four other conducts need only to be considered a criminal offence when involving a *non-negligible quantity / a non-negligible impact* (art. 3.c, 3.f, 3.g) or causing a “significant” deterioration.

Are those requirements present in your law? Or were they dropped when the legislator implemented the directive?

The requirements mentioned in Art. 3.a, 3.b, 3.d and 3.e are present in the law. The secondly mentioned requirements (non-negligible quantity/a non-negligible impact, and causing a “significant” deterioration) are present in the law in a more factual way: by the protected wild fauna and flora these are expressed in monetary value of the specimens. By shipment of waste the conduct of “non-negligible quantity” is not present, because the person who transports any waste without a license defined in a legal rule or infringing the obligation stipulated in a legal rule or executable official decision commits a crime under Hungarian law, without any quantity bound.

How do you feel as a judge about them? Would they hamper you when conducting a criminal case or could you rather easily cope with them?

4/ What about the availability of criminal sanctions to punish environmental offences?

a/ Do the principal criminal sanctions include fines as well as imprisonment?

Imprisonment as well.

What are the legal minimum (if applicable in your national system) and maximum levels of fines and prison sentences?

1-5 years or in some cases even 2-8 years imprisonment, in case of preparation of the crime the legal maximum is 3 years imprisonment.

What impact does it have on sanction levels if the crime is committed by an organized criminal group?

The maximum levels of penalties can be doubled.

b/ Is forfeiture of illegal benefits possible? Yes, it is possible.

c/ Can criminal judges also impose remedial sanctions, for instance order the removal of waste, the closure of an illegal facility?

No, they cannot.

5/ What about the actual use of criminal sanctions to punish environmental offences?

a/ Are environmental offences brought to criminal courts? Does this happen rather often or only exceptionally? What kind of cases reach the court?

Yes, for example in 2014 1405 environmental offences were brought to criminal courts in Hungary, 501 persons were finally sentenced. Due to this high number “rather often” would characterize the Hungarian situation. The most common cases are from the field of cruelty to animals including poaching, waste management and nature protection.

http://birosag.hu/sites/default/files/allomanyok/statisztika2/2014.ev_.orszagosszesites.cd01.xls

b/ What are the penalties inflicted to convicted offenders?

i) Is imprisonment used and, if yes, also without probation? If so, what is the length of the inflicted prison sentences? Please indicate to which category of offences under Article 3 your reply refers.

According to our study imprisonment is used by environmental offences in Hungary, however mostly with probation (in 2014 from 296 imprisonment sentences 241 were applied with probation). The Hungarian

Criminal Code uses imprisonment in all categories of environmental offences. The length varies from one to eight years depending on the intention or negligence, the act, the theoretical value of the species etc.

- ii) How high are the fines that are imposed in practice? Is forfeiture of illegal benefits used as an additional monetary sanction?

In case the court sentences the perpetrator guilty, forfeiture of illegal benefits is used every time on the object of the crime for example a CITES listed artifact. Fines are applied rarely.

- iii) Do criminal courts also impose remedial sanctions?

In the case of damaging the environment (Criminal Code 241. § (3)) the punishment could be mitigated by the court if the perpetrator restitutes the original state of the environment. In addition to that prosecutors can call for voluntary compliance. This measure has been successfully applied (for example 14 times in 2014) in water and soil pollution cases where the responsible companies - already fined several times by environmental authorities – initiated voluntarily appropriate measures to reconstitute the environment and to avoid the next procedural steps.

c/ What is, to your opinion, the main reason why environmental offences would not reach a criminal court? Not enough inspections? Practical difficulties to prosecute environmental offences successfully (e.g. lack of training or specialization, lack of time, lack of financial resources, difficulties of proof, unclear criminal law) ? Is there a tradition to rather sanction such offences with administrative sanctions? Or are environmental rules simply not, or nearly not, enforced?

According to our study, most of the environmental criminal offences are dealt with in the investigation phase. Most of the cases are closed because the investigation proves the charges ill-founded. For example in CITES cases prosecution is carried out when it is commonly known that protected species are the subject of the case (ivory, crocodile skin, corals etc.) but an ingredient (saussurea costus in the concrete case) of a special herbal tea can be ill-founded. Administrative sanctions are more common (fines). Prosecutors initiate administrative procedures in case of the possibility of breach of administrative law (for example: in the field of forestry, abuse or mistreatment of animals etc.).

Please provide, if available, empirical data of summaries of interesting cases that illustrate your answer.

6/ As to structure of prosecuting environmental crime

Are prosecution and/or court procedure for environmental crimes concentrated on specialized prosecution offices/ courts or specialized sections within prosecution offices/courts?

There are no specialized prosecution offices/courts for environmental crimes, however there are assigned prosecutors on county level, and in the Office of the Prosecutor General there is a section, which partly deal with environmental crimes.

7/ What about the availability of administrative sanctions to punish environmental offences?

By 'administrative sanction' we mean sanctions imposed by an administrative body, an administration.

a/ Is it possible in your country to punish environmental offences by administrative fines? Yes, it is possible.

If so,

- i) could they be applied alongside criminal sanctions or only instead of them and at which point in the procedure has a decision to be made which “route” to follow;
- ii) what are the legal minimum and maximum of those administrative fines;
- iii) which are the administrative bodies who can inflict such fines?

Criminal and administrative sanctions can be applied alongside. Limits of administrative fines depend on the type of the infringement. The administrative bodies who can inflict such fines are environmental and nature protection inspectorates, which are now part of the government offices on the first level, and National Inspectorate for Environment and Nature on the second instance level.

b/ Which administrations can impose remedial sanctions to end environmental offences and remediate to the damages they caused? And which are the remedial sanctions they can impose? Can they give remedial orders? Can they themselves clean-up the damages and oblige the offender to pay the bill? Can they order to stop an illegal conduct? Can they suspend permits until the cause of the pollution of offence was remediated? ...

Remedial sanctions are imposed by environmental and nature protection inspectorates, which issue remedial orders. If the authority finds that the obligation prescribed in the decision was not fully discharged by the deadline for performance, the authority can carry out the performance at the cost and risk of the obligor. According to some Hungarian act, the authority can suspend permits until the offence has been remediated.

8/ What about the actual use of administrative sanctions against environmental offences?

a/ Are environmental offences sanctioned by administrative authorities? Does this happen rather often or only exceptionally? In what kind of cases?

Environmental offences are sanctioned in Hungary mainly by administrative authorities.

b/ What are the administrative sanctions that are used in practice?

Fines and remedial orders.

Is fining used? How high are the fines that are imposed in practice?

Fining is used frequently, although in practice fines only exceptionally reach the maximum level.

Are remedial sanctions used frequently, are rather seldom? Are they effective?

Remedial sanctions are not so frequently used.