**Access to a Hungarian court by citizens**

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On the basis of the questionnaire provided by Ludwig Krämer, in the following we make the distinction between the following topics:

1. traditional damage – personal impairment and burden of proof
2. actio popularis – class action in case of impairment of the environment or public interest
3. actio popularis – class action in case of damages
4. role of NGOs
5. role of other 'guardians'
6. passive administration
7. costs and fees
8. need for improvement and within this the need for EC intervention

1. Traditional damage

In Hungary, as well as in any other European country, citizens may go to court when they are personally interested or impaired – this is relevant in case of damages or administrative procedures, when the citizens are parties.

It was the framework environmental act (Act LIII. of 1995) which in its Art. 102 provided for a presumption in order to help the balancing of rights of different parties. This presumption is the following:

> (1) The liability for the unlawful activity - with the exception of criminal and petty offenced liability - , shall burden under joint and several liability the owner and the possessor (user) of the real property, on which the activity is or was carried out - until evidence is provided to the contrary.
>
> (2) The owner shall be exempted from the joint and several liability, if it names the actual user of the real property and proves beyond any doubt whatsoever that the responsibility does not lie with him.
>
> (3) The provisions of subsection (1) and (2) shall be appropriately applied for the owners and the possessors (users) of non-stationary (mobile) pollutant sources.

Otherwise environmental liability – and this is valid for both administrative and civil liability – is based upon a no-fault system, which also gives a hand to the victims, sharing the burden of proof between the wrongdoer and the victim. The victim has to prove the damage (or similar impairment) and the causal link, while

the wrongdoer has to find an escape clause. In theory the causal link may be taken as a serious difficulty, but the practice usually accepts the likelihood of such link.

There is one element in the Hungarian Civil Code (Act IV of 1959)de which provides for the possibility on a preventive measure to be taken by the court. It is the Art. 341 which makes it possible that in the case of a direct threat of damage, the interested parties may require the court to order the party posing the hazard of damage to stop the unlawful conduct.

2. Class action in case of impairment of environmental or other public interests

It was also the above mentioned environmental act, which in Art. 99 provided a general authorisation for environmental associations to go to public administration (see point 6) or to court:

(1) In case a hazard is being posed to the environment or the environment is being damaged or polluted, organizations are entitled to intervene in the interest of the protection of the environment and

a) to request the government organ or local government to take appropriate measures falling under its powers or

b) to file a lawsuit against the user of the environment.

2) In the lawsuit under subsection (1), paragraph b), the party to the case may request the court to

a) enjoin the party posing the hazard to refrain from the unlawful conduct (operation);

b) obligate the same to take measures necessary for the prevention of the damage.

This article refers only to interventions taken by courts.

3. Class action in case of damages

Neither the civil law, nor the environmental law provides for any means of a class action in case of compensation for damages. The main legal reason behind is that it would be difficult to allocate the compensation in case of such an action. There is only one indirect reference to such a possibility – it is the Art. 103 of the environmental act:

(1) Damage caused to other parties with activities or omissions entailing the utilization or loading of the environment shall qualify as damage caused with an activity posing hazard to the environment, and the provisions of the Civil Code on activities entailing increased hazard shall be applied (Civil Code, Sections 345 and 346).

(2) If the injured party does not wish to enforce its claim for damages under subsection (1) against the party causing the damage - on the basis of a relevant statement made by the injured party within the prescription period - the Minister may enforce the said claim to the credit of the environmental protection special appropriations chapter.

4. The role of NGOs

In Hungary the number of non-governmental organizations was 15 945 in 1990, 42 757 in 1995 and 52 000 in 2000, of which 1095 pursued environmental activities. It is the Civil Code and the Act II of 1989 about the right of association which regulates the framework for associations. Due to the amendments of the Civil Code at the time of the change of the regime, civil organizations can operate in form of foundation, association, public foundation, public body and organization of public use. On the basis of the Act CLVI adopted in 1997, the organizations could apply for registration as non-profit or organization of high public use, or for new registration.

The freedom of association allows the NGOs to formulate their legally approved organizational structure – above ten individuals who join – and these associations are registered by the court. Any of them may become an environmental association which claims in its by-laws that the purpose of the association is to protect environmental interests.

The special rights, among others access to administration or court, are provided for environmental associations exclusively. They may act in their respective territorial scope of authority, but they may also claim that the association is acting as a national one.

There are the following access to court rights given to associations:

- the association may act as a party to the public administration procedures (environmental act, Art. 98: Par.1 Associations formed by the citizens for the representation of their environmental interests and other social organizations not qualifying as political parties or interest representations - and active in the impact area - (hereinafter: organizations) shall be entitled in their area to the legal status of being a party to the case in environmental protection state administration procedures.), which would also mean that they are parties in the litigation phase – as the parties may challenge the decisions of public authorities in front of the courts;
- the class action type of participation in administrative procedures in a way of initiating such procedures– Art. 99, Par1, subpar. a) – but without a direct obligation of the public administration to act. Here the option is open, whether this initiating action may be taken as a normal request of a party to the authorities, as in that case the refusal of action may also be taken as a decision of the authority and the decisions may be challenged – after an appeal within the system of environmental administration – before the court;
- the possibility already mentioned in point 2.

5. Other 'guardians'

A new and active field of a kind of class action have be opened by the same environmental act – followed by similar provision in the nature conservation act – when providing rights to the prosecutor acting on behalf of public interests (Art. 109):

> (2) In case a hazard is posed to the environment, the prosecutor is also entitled to file a lawsuit to impose a ban on the activity or to elicit compensation for the damage caused with the activity posing hazard to the environment.
>
> (3) Acting in his jurisdiction of supervision of legality, and on the basis of legal rules pertaining to him, the prosecutor shall participate in ensuring the legality of the procedures and decisions of the environmental protection authorities.

The option under Par. 2 is a new field of activity for the prosecutors, which is gaining more and more importance in the last some years. There are several dozens of cases per year focusing on the limitation of unlawful activities usually successfully. The whole procedure shall be taken as a normal civil law procedure within which the county prosecutors' office is the plaintiff and the wrongdoer is the defendant.

6. Passive administration

There are two ways of reference to passive administration. The general way is regulated by the Administrative Procedures Act (Act IV of 1957), in Art. 4 which refers only to such procedures when the party initiated the procedure and the administration does not answer in the available statutory time limit (which is usually 30 to 60 days). In this case the party may request the second level authority either to intervene or to act instead of the lower level organ. The case may be decided by the court only if there is no second level administrative organ, otherwise the passive administration may not be challenged in front of the court.

A second alternative is the class action mentioned in point 2.

Otherwise there is no direct obligation of any of the state organs to act in the interest of the environment or to choose a specific type of instrument. As an example one may mention the legality supervision surveys of the prosecutors' offices in connection with the procedures of environmental administration, which in several case blaim the authorities not to use direct intervention measures but stay with the fining, which may be taken as a legal decision but not effective and far from being environmental friendly.

7. Costs and fees

In connection with administrative procedures the costs and fees are user

friendly, if we take environmental interests as priority issues. According to the Hungarian duty law the general procedural duty is 1500 HUF (5 USD), the duty of appeal amounts to 3000 HUF (11 USD). In cases of environmental issues the procedural duty of first instance is 2000 HUF (7 USD), and 4000 HUF (14 USD) of the second instance, and in cases related to water management it amounts to 2000 HUF (7 USD) and 5000 HUF (18 USD), respectively. Civil organizations enjoy full duty exemption, provided they incurred no corporate tax payment liability for their revenues pursued in the previous calendar year. The duty exemption does not include private individuals, but can be granted after due consideration. The duty of the procedure instituted for the court supervision of administrative orders shall be 6000 forints (21 USD).

In case of civil procedure if the subject matter of the procedure is a property item, then the rate of duty on the property item in concern is 6% both in the procedures of first and second instances. If the offended party in connection with an environmental issue, for instance, wants to be reimbursed the depreciated value of their real estate, then they risk a large amount of money. In addition to the procedural duty, parties shall count expertise fees as well as the counterpart's expenses. These additional charges make civil procedures and procedures for court supervision of administrative orders (also judged by civil courts) extremely risky, since the party losing a case shall ultimately bear the above mentioned costs of fees and duties. At present there is no such regulation or order in the Hungarian law, which would grant a general preferential discount for cases started in environmental issues.

In case of loosing the litigation, the one who lost has to bear the costs of the winner. These costs are general, framework costs in case of attorney's fees.

8. Improvement and EC framework

Today, the EC framework seems to be very useful for the Hungarian legal system, as the approximation is a priority issue. Unfortunately, this resulted in a situation when the formal transposition is nearly completed, while the implementation is far from being satisfactory and there is not too much care for the enforcement. No wonder why the judicial practice is very weak due to the lack of willingness to litigate.

If we take polluter pays principle serious, then the chance to have 15-20 different legal systems in terms of liability and access to court, or in terms of likelihood of enforcement may lead to great differences in practical financial efficiency. Thus, a modest harmonization is EC level is desirable. I mean modest as

providing the framework for liability or access to court issues and not entering into the details which shall be given in domestic level.

Some of the useful hints:

- general framework for class action in case of intervening into polluting activities, while this may not be extended to compensation issues;
- supporting capacity building, mostly in terms of NGOs;
- presumptions providing better chance for the burden of proof – for example presumption of causal link in case of activities which are not common in a given area, etc.;
- providing capacity for other 'guardians', such as prosecutors;
- providing better and easier conditions for litigation fees in case of environmental interests;
- regulating no-fault liability based civil liability, etc.