

HUNGARY

1. The right to be tried within a reasonable time

1.1. What usually triggers, in your country, the opening of a file on an environmental offence at the public prosecutor's office? The reception of a notice of violation recording the offence? Other triggers?

In Hungary it is the prosecutor's right to decide whether to open a file on an environmental offence. The most important trigger is, if the prosecutor's office decides not to open a file. In Hungary offences are divided in two: those which are prosecuted *ex officio* and those, which are subject to private prosecution, environmental offences belong to the *ex officio* prosecuted offences.

1.2. What is on average the time required in your country in criminal proceedings to go from a citation to a first instance judgment and to an appeal judgment?

It is difficult to answer this question because of the wide range of the environmental offences.

1.3. What procedural steps can take time?

The witness(es) non-attendance, or if the judge is hindrance, and as environmental criminal proceedings are quite rare, more specialization for environmental crime at the police, at the prosecutors office and at the courts would be important.

1.4. Are you aware of difficulties with this guarantee?

Yes, the guarantee to be tried within a reasonable time is a very important guarantee.

1.5. What are the legal consequences of undue delay in your legal system?

In case of a delay, penalties are reduced, because the aim of the punishment can not be achieved.

2. The right to a fair trial as including the right to respect of judgments / implementation of judgments

2.1. What do you know about the implementation of judgments in your country? Are punitive sanctions (prison sentences, fines, other) implemented? Are remedial sanctions (reinstatement of the environment, compensatory action, other) implemented? Who is in charge? What goes well, wrong?

Sentences are implemented effectively. Remedial sanctions can not be imposed by criminal courts in Hungary, remedial sanctions are imposed by environmental authorities, and are implemented by these authorities. Administrative sanctions can be appealed to the superior authority with the exception of decisions made by superior authority on the first instance. In such cases there is a direct remedy to the administrative court against such decisions.

2.2. Can criminal courts also impose remedial sanctions in your country? If so, can they do so *ex officio* or only on request by the prosecution or a civil party?

Criminal courts in Hungary can not impose remedial sanctions. Criminal proceedings and administrative proceedings are separate, see answer 2.1.

2.3. Worldwide NGO's play a significant role in the prosecution of environmental offences. Can they be a civil party in criminal proceedings under the law of your country? Do they have an easy access to criminal proceedings or are there severe conditions to meet? Can they obtain damages? Can they request remedial action?

NGOs cannot participate as civil party in criminal proceedings, they can be parties in administrative proceeding, if they fulfill the criteria laid down in national law. (Environmental NGOs have legal standing in environmental administrative procedures if they operate in the impact area of an activity or facility.)

3. The right to be presumed innocent

3.1. What are the basic principles of evidence in the criminal law of your country? Are the means of proof free or restricted? What evidence is most often used in environmental cases? What type of evidence creates troubles (too costly, too difficult to obtain, too easily mismanaged by environmental inspectorates, ...)

The Hungarian Criminal Code is a mixture of elements of the two main procedural systems concerning evidence: the main rule is that using evidence to prove the truth is free, but the Criminal Code catalogues the means of proof and the rules of exclusion of evidence. The evidence and the result of the evidentiary process shall be judged freely. The Criminal Code does not attribute more or less persuasive evidentiary power (and probative value) to certain pieces of evidence, the judge is entitled (and in parallel obliged) to define the weight of the evidence alone and then to decide on his/her own conviction.

An important principle of the evidentiary law is the "in dubio pro reo" principle, which derives from the presumption of innocence, which means, that any uncertainty of the evidence – facts not proven beyond a reasonable doubt – may not be contemplated to the detriment of the defendant.

The lawfulness of the evidentiary procedure is a substantial interest, according to the Criminal Code, the human dignity, the personality right and the right of reverence of those involved shall be respected in the course of the acts of the evidentiary procedure, and unnecessary disclosure of data on privacy shall be prohibited. The rules are to exclude any arbitrary use of state power and in parallel to ensure that the evidence obtained is reliable and authentic. If the regulation of the Criminal Code is not violated during the criminal procedure, the evidence against the defendant is to be regarded as lawful and establish his/her guilt constitutionally.

The ex officio principle requires that the collecting and presenting of evidence is an important task of the authorities as well, the burden of proof is generally on the side of the prosecutor and the individual is not obliged to prove his/her innocence (principle of innocence).

The principle of immediacy requests, that the persuasion of the judge shall be the result of only what the judge him/herself has seen and heard during the trials. The court observes the evidence directly, the accused, the witness and the expert are heard, the expert's opinion is examined by the court. Documents and other physical evidence are examined by the court directly as well. The other meaning of this principle is the continuity of the trial: according to the Criminal Code, the court shall not interrupt the trial except under special circumstances.

The Hungarian procedural law lists the admissible means of proof: the statement of the witness, the expert opinion, the different forms of physical evidence, the documents and the statement of the defendant. Documents and physical evidence produced or obtained by other authority may also be used in the course of the criminal proceedings.

In environmental cases the most often used means of evidences are the statements of the witnesses, the expert opinions, documents.

3.2. How do you see the impact of the principle of innocence on the prosecution policy? Do you feel it has an overly restrictive impact, in general, for some type of cases?

The principle of innocence is included in the Act of Criminal Proceedings, where it is declared, that no one can be considered guilty until a final sentence.

3.3. How do you see the impact of the principle on the assessment of facts and guilt (intentional /negligence) in the conviction decision? Do you feel it has an overly restrictive impact, in general, for some type of cases?

The principle does not significantly restrict the assessment of guilt in environmental crime.

3.4. How do you see the impact of the principle on the sanctioning decision? Do you feel it has an overly restrictive impact for some type of sanctions?

In my opinion the principle of innocence does not have an overly restrictive impact on sanctions.

4/ The privilege against self-incrimination

4.1. Does the environmental law in your country make (an extensive) use of self-monitoring and -reporting obligations? Does it provide in inspection rights to ask for information, sanctioned when not complied with?

Yes, Hungarian environmental law prescribe self-monitoring and self-reporting obligations. The data have to be supplied to the environmental authorities, but these information are not used in criminal proceedings, only in administrative proceedings.

4.2 If so, are you aware of prosecution difficulties caused by the privilege against self-incrimination? Is it easy to draw the boundaries between evidence that can be used and evidence that cannot be used because of this privilege? Please illustrate your answer by case-law.

The Hungarian law do not give any solution to solve the conflict between self-monitoring requirements and the prohibition of self-incrimination.

5/ The protection against double jeopardy

5.1. Are criminal courts in your country confronted with double jeopardy when dealing with environmental offences? If so, what is the typical case-set: a combination with administrative fines, with penalties from other policy areas such for instance as agricultural policies?

In Hungary criminal courts may confront with double jeopardy when dealing with environmental offenses, the typical case is the combination with administrative fines.

5.2. Are there discussions with regard to the scope of the guarantee? Areas of doubt, vagueness? What, for instance, about EU-regulations regarding extensive farming and mandatory cuts in the income support to farmers when infringing the cross-compliance conditions? *Please provide a case from your country to discuss this guarantee.*

There are discussions with regard to the scope of the guarantee, not only in environmental cases, but in general.

6/ The right to proportional penalties

6.1. Have you noticed, in your practice, environmental cases where the penalties inflicted were too severe?

Penalties in environmental cases are not too severe.

6.2. If so, could you elaborate and tell why you felt the penalty was too severe?

See answer 6.1.

6.3. At the level of the Council of Europe, Recommendation No. R (92) 17 of the Committee of Ministers to member states concerning consistency in sentencing states, in its point B.7.a: *“As a matter of principle, every fine should be within the means of the offender on whom it is imposed.”* Do you consider that proportionality in punishment requires to have consideration for the extent to which the penalty hurts the offender, implying, for instance, that for identical offences a firm with healthy finances should be punished with quite higher fines than an individual with a low income? What is the punishing practice in this regard in your country?

According to the Hungarian Criminal Code when imposing a fine the assets, the earnings, the incomes and the life-style of the perpetrator have to be taken into consideration (Article 50.). This means, that the inflicted sanction on two persons, that committed the same offense can be different.

7/ The right to respect for private and family life

7.1. Have you noticed an impact of the right to respect for private of family life on the environmental adjudication in your country? If yes, could you please provide examples form the case-law illustrating this influence?

The right to respect for private and family life is not often referred to in Hungarian environmental adjudication, although this depends on the type of the committed environmental crime.

7.2. Would you be willing to use this right in support of environmental adjudication and, if so, in which type of cases?

In case that the same conclusion cannot be reached on the base of the Hungarian laws.

8/ The right to life

8.1. Have you noticed an impact of the right to life on the environmental adjudication in your country? If yes, could you please provide examples form the case-law illustrating this influence?

No.

8.2. Would you be willing to use this right in support of environmental adjudication and, if so, in which type of cases?

Theoretically yes, although it is questionable whether these provisions have added value considering the Hungarian law. I think, that this could be a supporting reason in the environmental adjudication.

9/ The right to environmental protection

9.1. Do you consider this right to have impact on environmental adjudication?

No, as this provision in itself is too general, the EU and the Hungarian Parliament adopts the legislation which have the real impact on the environmental adjudication.

9.2. Do you agree with the proposition that, in environmental adjudication, it is only fit to impact on the sanctioning policy, meaning choice and level of sanctions inflicted?