Hungary

Access to justice in environmental matters - Hungary

I. Constitutional Foundations

The Hungarian Constitution 2011 includes a number of environmentally important references. First of all, it includes everyone's right to a healthy environment as well as an obligation to restore or pay for the restoration of any damage done to the environment (Article XXI). It also includes an obligation for the State and everyone else to protect, maintain and guard natural resources, especially soil, forests, waters, biological diversity and cultural values, all of which form a common heritage of the nation (Article P). Also sustainable development is mentioned in the Constitution as one of the aims of Hungary (Article Q). Access to justice is regulated in a general manner, guaranteeing the right of remedy against any judicial or administrative decision affecting someone's rights or legitimate interests (Article XXVIII). Citizens, however, cannot directly invoke constitutional rights in administrative or judicial proceedings, because according to the established interpretation of the law, constitutional rights need to be specified in lower level norms in order to be used as legal basis for claims. Parties to an administrative or judicial procedure can rely directly on international agreements to which Hungary is a party, however, there is no real need for this because once Hungary is bound by an agreement, and the latter is made part of the domestic legal system by its proclamation through a Hungarian norm. There are a few examples when administrative bodies and courts apply the Aarhus Convention as part of their reasoning to a decision, however, the awareness of the public administrative and judicial bodies on the Aarhus Convention still remains quite low.

II. Judiciary

The court system in Hungary operates based on the separation of powers and is independent from the legislative as well as the executive branches of government. There are four levels of the judiciary; the hierarchy of the courts from the bottom to the top is the following: the district courts (járásbíróság) (in Budapest these are the capitol district courts (kerületi bíróság)), the county courts (megyei törvényszék) (in Budapest this is the Capitol Court (Fővárosi Törvényszék)), the regional courts (táblabíróság) and the Supreme Court (Kúria). From 1 January 2013 independent administrative and labor courts (közigazgatási és munkaügyi bíróság) have been set up in Hungary. There are 111 district courts, 20 county courts, 5 regional courts and one Supreme Court in Hungary

in addition to 20 administrative and labor courts. Courts in Hungary have a constitutional duty to adjudicate legal disputes between private entities (private law, commercial law or labor law disputes) or between the state and private entities (administrative law and criminal law disputes). The judicial system has a civil law background, and mostly operates on an inquisitorial approach with an increasing influence of the contradictorial elements. Civil law disputes in the first instance are mostly decided by single-judge benches (egyesbíró) with the exception of a few cases and labor law cases where the bench includes two laymen (ülnök) besides the judge. Criminal cases are decided by single-judge or one judge + 2 laymen benches based on their gravity. Higher level courts in the second instance sit in three-judge benches or in very exceptional cases in five-judge benches. Evidence is the duty of the plaintiff in civil law and administrative law cases, while in criminal cases it is the duty of the state prosecutor (ügyész) representing the charge. There are no special courts to adjudicate in environmental matters in Hungary. Therefore environmental cases are either decided by administrative and labor courts or by regular private law courts, depending on the nature of the legal dispute. Forum shopping is possible in the Hungarian legal system with certain limitations. While the level of court to approach is set by law, in certain circumstances the plaintiff may choose at which location s/he wants to start the procedure (e.g. instead of turning to the court at the residence of the defendant, s/he turns to the court at the location where damage was suffered in damages cases). In private law matters affecting properties and payments, parties to a contract can even set the court where their legal dispute would belong, again with certain limitations. Ordinary appeals can be submitted in private law disputes against the substantive judgment, challenging both the procedural and substantive legality of the decision. Procedural orders of the court (végzés) can only be appealed with limitations. Deadline for the submission of appeals is 15 days since the delivery of the court decision. In administrative law cases, there is no appeal against the first instance judgment; however, procedural court orders can still be appealed. There is a possibility to file an extraordinary request for review (felülvizsgálati kérelem) against a final judgment of the court to the Supreme Court challenging the procedural legality of the decision. The deadline for this action is 60 days since the delivery of the final judgment. Courts in administrative law cases have only cassation rights (hatályon kívül helyezés), with a very small number of exceptions of reformatory rights (megváltoztatás). These latter cases do not affect environmental matters, therefore in environmental cases courts can only quash administrative decisions and at the same time order the administrative organs to revisit the cases.

Environmental court cases are specific in a number of ways:

- first of all, most environmental cases are administrative law disputes, involving a private entity as plaintiff and the environmental protection agency as defendant
- such cases are mostly decided upon the legal evaluation of the case, whether the administrative decision conforms with the prevailing regulations
- secondly, a few private law cases are environmental in their character, e.g. compensation cases for environmental damage
- in these cases, the decision in the case is frequently dependent upon expert opinions
- environmental NGOs can start lawsuits against polluters asking the court to order the stopping of pollution and introduction of preventive measures
- however, such cases are very rare and are not effective whatsoever, due to the heavy burden of proof on the applicant NGOs
- there are only a very few number of environmental criminal cases, and almost none of them ends with an effective imprisonment judgment

Courts normally act upon the request of the parties to the legal dispute; however, in a few instances courts may act ex officio. These are the following:

- decide upon the bearing of the costs by the parties
- postpone the hearing of a trial
- initiate a preliminary ruling procedure at the Court of Justice of the EU
- initiate a procedure at the Constitutional Court for the examination of the constitutionality of a law
- initiate a procedure at the Supreme Court for the examination of the constitutionality of a local law
- find evidence and suspend the applicability of an administrative decision in administrative court cases

III. Access to Information Cases

Access to information is regulated in a general manner as well as specifically relating to access to environmental information. Remedies, however, against the refusal of or the wrongful/inadequate answer to a request for environmental information are not specific. Those requesting the information may initiate court proceedings before a regular private law court against the refusal or the lack of provision of information within 30 days, calculated from the delivery of the refusal or the expiry of the statutory deadline

for provision of information (15 days). Courts can order the holder of information to disclose the requested data in case of a substantiated claim. There is an autonomous administrative body called National Data Protection and Freedom of Information Authority (Nemzeti Adatvédelmi és Információszabadság Hatóság) to which complaints in freedom of information matters can be submitted. The Authority in case the complaint is substantiated can call the affected organ to correct unlawfulness. In case the latter fails, the Authority can start a lawsuit against the affected organ. Refusals of request for information have to include a warning on the remedies available. Those who claim that their request for information was refused or wrongfully/inadequately answered shall follow the below procedural rules:

- must make sure that their court claim is submitted (posted) within 30 days of the refusal, etc.
- or have to submit a complaint to the Authority, however, no deadline is specified for such submissions
- the court claim has to conform with the general requirements of a court claim, there are no special requirements
- there is no obligation to be represented by an attorney before the court
- burden of proof is reversed, i.e. the holder of information must prove that there were grounds for refusal, etc.
- the court procedure is *ex lege* expedited
- there is no court tax to be paid by the plaintiff claiming the information

Courts do not have access to the information the disclosure of which is disputed by the parties; therefore the judge has to decide upon the freedom of information claim practically not knowing the information in question. Therefore courts are dependent in such matters on the arguments provided by the parties to the case. Courts can order the disclosure of information if the applicant's claim is well founded.

IV. Access to Justice in Public Participation

Environmental administrative procedures do not have a specific procedural regime in Hungary; they are mostly decided applying the general administrative procedures universally applying in almost all types of administrative cases. Some laws however add certain procedural steps or requirements to the general rules of administrative procedures. These laws are either sectoral environmental laws (e.g. on waste management) or horizontal environmental laws (e.g. on environmental impact assessment). There are a number of features and detailed and specific procedural rules characteristic of environmental administrative procedures. These are:

- almost all cases are decided by the regional environmental, nature conservation and water management inspectorates (környezetvédelmi, természetvédelmi és vízügyi felügyelőség) with only a few exceptions that are decided by municipality clerks (jegyző)
- there are only 10 regional environmental agencies in Hungary, and their territorial competence aligns not with the regular county division of the country (Hungary has 19 counties and 1 capitol) but with the major river basins and catchment areas
- environmental agencies have their in-house experts therefore they do not involve external expertise for decision-making
- some environmental procedures are allowed to last longer than the general 30-day deadline of regular administrative procedures, e.g. the environmental impact assessment procedure may last for 3 months
- in a number of environmental cases, there are fees (díj) to be paid instead of the regular duties (illeték), and such fees may be quite significant in the highest profile cases (EIA and IPPC)
- cases that affect the environment but are not decided by the environmental inspectorates fall under the competence of a number of government agencies or specific departments of the country government offices, e.g. forestry department, traffic department, mining agency, etc.
- environmental administrative cases usually guarantee more public participation and openness than regular administrative cases which may take the form of public announcements on the case, public hearings or even legal standing to NGOs

Administrative decisions can be appealed to the superior authority with the exception of decisions made by the head of a central administrative agency or by a minister on the first instance. In such cases there is a direct remedy to the court against such decisions. Otherwise first instance administrative decisions cannot be taken to the court directly, i.e. the regular appeal has to be exhausted before going to court, except in the aforementioned cases. In environmental cases, courts review both the procedural and the substantive legality of decisions, i.e. not only whether the content of a decision is in line with the regulation but also whether the decision was made in the proper way prescribed by law. Courts also look "beyond" the administrative decisions and check if the supporting materials serving as a substantiation of a decision were done in a proper way. The most prominent example of this is EIA cases where courts do review whether the environmental impact statements were done in a scientifically

verifiable manner, and involve external experts into its adjudication. Land use plans are adopted in the form of municipality laws (rendelet) and resolutions (határozat) against which there is a restricted possibility to go to court. Local laws are reviewed by the Constitutional Court for their conformity with the Constitution, by the Supreme Court for their conformity with other higher level norms and local council resolutions are reviewed by regular courts, however, these procedures can only be initiated by the county government offices (megyei kormányhivatal). Procedures of the regular court in such matters are the same as in regular administrative law cases.

EIA screening decisions can be reviewed by courts just as regular administrative decisions. Standing in such cases is provided to the project developer, the entity preparing the EIA, any individual whose rights and legitimate interests are affected (having a real estate or a registered right relating to a real estate in the impact area of the planned development) and any registered environmental NGO active in the impact area. In such cases, the regular courts deciding in administrative cases adjudicate, with no specific procedural rules, and can only quash the screening decision.

EIA scoping decisions are not made in the form of a separate substantive administrative decision; therefore there is no possibility for a court review thereof. Any concern about the correctness of issues assessed in an EIA process, or the lack of issues examined during the EIA have to be raised in an appeal against the substantive EIA decision granting or refusing an environmental permit before the development consent is issues.

Substantive EIA decisions take the form of an authorization called environmental permit (környezetvédelmi engedély). These can be appealed in the first instance and the second instance decision can be reviewed by the court (from 1 January 2013 by the administrative and labor court). Standing in such cases is provided to the project developer, the entity preparing the EIA, any individual whose rights and legitimate interests are affected (having a real estate or a registered right relating to a real estate in the impact area of the planned development) and any registered environmental NGO active in the impact area. There is no obligation but a practical need to involve external experts into the court procedure, because the judge is not able to decide in such complicated matters as the correctness of EIA findings. The courts review both the procedural and the substantive legality of the environmental permit, i.e. if the sectoral environmental laws as well as the administrative procedural law were respected during the administrative (EIA) procedure. Courts also look beyond the EIA decision and verify material and technical findings and calculations of the Environmental Impact Study.

It is not necessary to participate in the EIA proceeding in order to have legal standing before the court in EIA cases, however, it is necessary to meet the requirements of standing and to exhaust administrative remedies before filing a lawsuit. However, it is not necessary that the entity filing the lawsuit be the same who exhausted the administrative remedies; the only condition is that only second instance EIA decisions can be taken to court. Injunctive relief is possible in EIA court cases, however, there are no special rules prevailing in such procedures compared with the general rules of injunctive relief. Conditions to be fulfilled are those listed under point X below.

Substantive IPPC decisions take the form of an authorization called single environmental operation permit (egységes környezethasználati engedély). These can be appealed in the first instance and the second instance decision can be reviewed by the court. Standing in such cases is provided to the project developer, the entity preparing the IPPC documentation, any individual whose rights and legitimate interests are affected (having a real estate or a registered right relating to a real estate in the impact area of the planned development) and any registered environmental NGO active in the impact area. There is no obligation but a practical need to involve external experts into the court procedure, because the judge is not able to decide in such complicated matters as the correctness of IPPC findings. The courts review both the procedural and the substantive legality of the single environmental operation permit, i.e. if the sectoral environmental laws as well as the administrative procedural law were respected during the administrative (IPPC) procedure. Courts also look beyond the IPPC decision and verify material and technical findings and calculations of the IPPC documentation.

It is not necessary to participate in the IPPC proceeding in order to have legal standing before the court in IPPC cases, however, it is necessary to meet the requirements of standing and to exhaust administrative remedies before filing a lawsuit. However, it is not necessary that the entity filing the lawsuit be the same who exhausted the administrative remedies; the only condition is that only second instance IPPC decisions can be taken to court. Injunctive relief is possible in IPPC court cases, however, there are no special rules prevailing in such procedures compared with the general rules of injunctive relief. Conditions to be fulfilled are the same as in EIA court cases.

V. Access to Justice against Acts or Omissions

There are a number of possibilities to submit claims to court directly against private individuals or legal entities. First of all, if the defendant has done damage to the applicant, the latter can claim regular private law compensation for the loss. As a subset of this, the applicant to be potentially damaged can claim that the court order the defendant to prevent the damage. In case the defendant operates a dangerous facility (veszélyes üzem) or performs a dangerous activity (which is every activity using the

environment as a resource or as a target of emission) then the burden of proof is shifted to the defendant and s/he has to prove that the damage was attributable to an unpreventable external cause (objective or strict liability). Secondly, direct claims can be formulated as nuisance claims (birtokvédelmi kereset) in case the defendant disturbs the applicant with environmental impacts, e. g. fumes, noise, other disturbances. This option is mostly used in a neighborhood context where the applicant and the defendant reside in proximity. Thirdly, personal integrity claims (személyiségvédelmi kereset) can be submitted against those who harm the integrity of an individual, the latter including health, well-being, right to life or right to home. Finally, the Environmental Protection Act and the Nature Conservation Act both contain a legal opportunity for environmental and/or nature conservation NGOs to file lawsuits against polluters or those damaging natural values. Such cases are adjudicated by regular private law courts and applicants may claim that the court order the defendant to stop pollution/damage to nature and introduce preventive measures in order to avoid pollution/damage.

Claims against state bodies can be submitted in two possible cases:

- if the state body is the polluter, then the same rules apply to them as to regular polluters
- if the state administrative body's decision-making procedure was faulty (either procedurally or in terms of substance) and the fault reaches a certain threshold (extraordinary, purposeful or highly negligent) than compensation can be claimed from the state administrative body by those who suffered a damage by this

In environmental liability matters, the competent authority designated by Hungary is the regional environmental, nature conservation and water management inspectorate (környezetvédelmi, természetvédelmi és vízügyi felügyelőség). A request for environmental liability action can be submitted at these agencies using the regular ways of communication, e.g. by mail, email, phone, fax or personal appearance in office hours at the helpdesk of the agency. A request of action has to conform to the usual requirements of any such request, e.g. has to include the name and whereabouts of the initiator, the description of the matter and a definite call for action. Environmental NGOs can also submit such request upon the entitlement by the Environmental Protection Act. Court review of decisions made by the environmental agency in environmental liability matters differs according to the nature of the decision. If the decision is about environmental liability as such, the rules of court review are the same as in case of regular administrative decisions, because the environmental agency has to make a formal decision in such matters also, and liability cases do not have a special procedural regime. In case the decision of the environmental agency is in fact a response to a request for action, there is no court review available. Such decisions are rather replies to requests; the latter characterized by the Environmental Protection Act and the environmental agencies also as only public complaints. And because there is no need to make formal administrative decisions on public complaints, there is no decision that could be taken to the court. Environmental liability is principally enforced by the state administration, which uses its powers to make administrative decisions in liability issues. Private entities can enforce environmental liability with serious limitations. It is only available for environmental NGOs and such NGOs can file lawsuits against polluters or those damaging natural values. Such cases are adjudicated by regular private law courts and applicants may claim that the court order the defendant to stop pollution/damage to nature and introduce preventive measures in order to avoid pollution/damage.

VI. Other Means of Access to Justice

In case there is an environmental problem, there are other means of remedies available besides the actions of administrative organs and lawsuits initiated at courts. Some of these remedies respond to factual problems in the environment (e.g. a pollution) while others tackle suspected maladministration of environmental issues by public authorities. These are the following:

- public prosecutor (ügyész): Public prosecutors have two types of powers with which they respond to both types of problems: pollution and maladministration. In terms of pollution, the prosecutor is entitled by the Environmental Protection Act to start a lawsuit against a polluter for stopping the activity or ordering the polluter to pay compensation; also according to the Civil Procedure Act, the public prosecutor can start a lawsuit if those who are otherwise entitled are not able to enforce their rights, except when the enforcement of rights requires personal enforcement action. In terms of maladministration, the public prosecutor within its competence of public interest protection can issue a call (felhívás) to any public authority against its final decision not adjudicated by the court that deems unlawful. The call has to be issued within one year and the addressee of the call is the superior authority of the decision-making organ. In case the call fails the prosecutor can start a lawsuit against the unlawful decision.
- ombudsman (Alapvető Jogok Biztosa): The ombudsman can investigate the actions or omissions of public authorities and in case the latter harm or endanger basic rights of citizens can take respective measures. These measures can be: issue a recommendation to the superior authority of that investigated, initiate a process at the prosecutor, initiate a process at the National Data Protection and Freedom of Information Authority, initiate a process at the Constitutional Court, or can be an *ami cus curiae* in administrative court cases in environmental matters.

- deputy ombudsman for future generations (Alapvető Jogok Biztosának a jövő nemzedékek érdekeinek védelmét ellátó helyettese): Previously this position was an independent environmental ombudsman position; however, from 1 January 2012 the position is one of a deputy. Powers of the deputy ombudsman are: survey the enforcement of interests of future generations, regularly inform the ombudsman of its impressions, call the attention of the ombudsman for the threat of unlawfulness affecting a larger group of people initiate an investigation of the ombudsman, participate in such investigations and suggest a process before the Constitutional Court.
- National Data Protection and Freedom of Information Authority (Nemzeti Adatvédelmi és Információszabadság Hatóság): The Authority receives complaints in freedom of information matters when freedom of information requests were refused unlawfully. The Authority in case the complaint is substantiated can call the affected organ refusing the request to correct unlawfulness. In case the latter fails, the Authority can start a lawsuit against the affected organ.
- OECD National Focal Point: In case a multinational company has caused an environmental problem, there is a possibility to apply the OECD Guidelines for Multinational Enterprises that also has a number of environmental provisions. In this case, a complaint can be filed at the Hungarian National Contact Point within the Department of International and EU Affairs at the Ministry for National Economy (Nemzetgazdasági Minisztérium). The Contact Point will bring together the affected parties and try to reach an agreement, and also close the case with a statement.

Private criminal prosecution is only available in very limited types of cases and in relation to crimes that were committed against the person and not the environment. One such type of case however can have environmental relevance; it is the libel (defamation) cases. In those cases the charge is represented by private persons who are offended or harmed by the libel (defamation). Such cases may have environmental significance if initiated against environmental activists or NGOs as part of a SLAPP (Strategic Lawsuit Against Public Participation) action.

In case of maladministration (inappropriate administrative action, administrative inaction or omission) there are a number of remedies available, such as:

- complaint to the ombudsman, see above
- complaint to the public prosecutor, see above
- complaint to the National Data Protection and Freedom of Information Authority, see above
- in case of administrative silence, the superior authority calls the decision-making organ to act upon a petition submitted by a party to the case; if the inaction persists, the superior authority can appoint another authority with the same competence to make a proper decision; in case the call by the public prosecutor to end administrative silence has not produced a result, the prosecutor can initiate a case at the court

VII. Legal Standing

Legal Standing	Administrative Procedure	Judicial Procedure
Individuals	Those individuals whose rights or legitimate interests are affected by the case have legal standing. If the law regulates so, these are those individuals who own a real estate in the impact area of an activity or facility or whose rights relating to such a real estate are registered officially.	Anyone can have standing in a judicial procedure that can have rights and obligations; however, this is only the ability to have standing. Those have in fact legal standing whose rights or legitimate interests are affected. This can be proven for instance by demonstrating that the person participated in the administrative procedure that precedes the judicial phase in a case.
NGOs	Law can grant legal standing to NGOs whose activity is aimed at the protection of a fundamental right or the promotion of public interest. Environmental NGOs have legal standing in environmental administrative procedures if they operate in the impact area of an activity or facility.	NGOs have legal standing in environmental cases in two different circumstances.

		a) In procedures initiated against administrative decisions, those environmental NGOs have legal standing that operate in the impact area of an activity or facility. b) Environmental NGOs can start a lawsuit against polluters and ask the court to order the ceasing of the activity or the introduction of preventive measures by the polluter.
Other legal entities	Other legal entities or organizations with no legal personality have standing if their rights or legitimate interests are affected by the case.	Other legal entities or organizations with no legal personality have standing if their rights or legitimate interests are affected by the case.
Ad hoc groups	Ad hoc, non-registered groups have no legal standing.	Ad hoc, non-registered groups have no legal standing.
foreign NGOs	In general, since foreign NGOs are not active on the territory of Hungary, they have no legal standing in those procedures where otherwise NGOs registered in Hungary do. In special circumstances, e.g. on a reciprocal basis with other countries or in Environmental Impact Assessment cases in a transboundary context, foreign NGOs can exercise standing rights.	In general, since foreign NGOs are not active on the territory of Hungary, they have no legal standing in those procedures where otherwise NGOs registered in Hungary do. In special circumstances, e.g. on a reciprocal basis with other countries or in Environmental Impact Assessment cases in a transboundary context, foreign NGOs can exercise standing rights.
Any other	Those bodies, whose tasks are affected by the case but have not participated in the decision-making in the case, can have legal standing.	Those bodies, whose tasks are affected by the case but have not participated in the decision-making in the case, can have legal standing.

There are no significantly different procedures applicable to individuals in sectoral environmental legislation. EIA and IPPC processes are typically more open due to the fact that everyone is having legal standing who lives or resides on the impact area of the planned or operating facility/activity. However, in road construction procedures and those relating to atomic energy matters, legal standing of individuals is more restricted. As said above, NGOs have privileged legal standing in environmental administrative procedures, the latter characterized by the Supreme Court as those in which the regional environmental agency is a decision-making or a co-decision authority. Foreign individuals and NGOs have a special legal standing regime stemming for the Espoo Convention in transboundary cases. This guarantees that those affected by a planned activity in a foreign country enjoy equivalent legal standing as those affected in Hungary.

There is no real *actio popularis* in Hungary, i.e. a possibility that anyone can go to court against an administrative decision or the action or omission of another person without a legal interest having stated. Previously, there was an *actio popularis* available against any normative act at the Constitutional Court; however, since January 1, 2012 (the entry into force of the new Constitution of Hungary) this is only available in cases where the person was affected by the implementation of an unconstitutional norm.

Other institutions also have legal standing as follows:

- ombudsman: the ombudsman can be an amicus curiae in administrative court cases in environmental matters

- public prosecutor: the prosecutor is entitled by the Environmental Protection Act to start a lawsuit against a polluter for stopping the activity or ordering the polluter to pay compensation; also according to the Civil Procedure Act, the public prosecutor can start a lawsuit if those who are otherwise entitled are not able to enforce their rights, except when the enforcement of rights requires personal enforcement action
- National Data Protection and Freedom of Information Authority: the Authority has standing to sue against those not providing public interest information unlawfully and refusing to act in accordance with the preceding call for action by the Authority

EIA and IPPC rules for standing of individuals/NGOs and access to justice only prevail if the procedure is an EIA or an IPPC permitting. In general, for environmental matters (e.g. air quality emission limit values, noise emission limit values, waste management permits, etc.) the general standing rules prevail, i.e. as indicated in the above matrix.

VIII. Legal Representation

The role of lawyers is to supports individuals and legal entities in the enforcement of their rights. They are part of a larger system the components of which (prosecutors, judiciary, etc.) promote rule of law. Lawyers can be attorneys who are licensed to represent clients on a contractual basis or can be lawyers employed by state bodies. Lawyers employed by the environmental state administrative bodies or the Ministry of Rural Development (*de facto* Ministry of Environment of Hungary), apply environmental law on a daily basis. Their number is between 50 and 100 in Hungary. Private attorneys representing individual or corporate clients have to apply environmental law once the life or operation of such entities respectively so require. Their number is not predictable. Public interest environmental lawyers represent clients against polluters for enforcing environmental liability or against state administration for preventing potentially environmentally harmful developments. Their number is between 5 and 10 in Hungary. Legal counsel is not mandatory in most of the judicial procedures, and in environmental court cases respectively. The few exceptions where legal representation is mandatory are the following:

- appeal procedures before the regional courts
- remedy procedures before the Supreme Court
- any procedure before the country courts except in cases where the pecuniary value of the case does not exceed EUR 100 000, cases for compensation for maladministration, media and press cases, cases for personal integrity protection and administrative court cases

There are a number of lawyers specializing in environmental matters, however, to different extent. Only a few large law firms advertise that their portfolio includes environmental law and these are typically the largest ones in the country. Some attorneys work for corporate clients whose operation involves the implementation of environmental law on a regular basis, however, their names are not known. A few attorneys claim in the public eye that they are experts of environmental law (e.g. taking high profile environmental cases, such as the one in which the defendant is the company potentially causing the 2010 October red mud spill), but this seems to be rather a one-time action not supported by the general portfolio of such attorneys. Lastly, there are a few NGOs that specialize in environmental law, either by employing lawyers for their own environmental cases (3-4 NGOs) or by having a staff that provides legal help in public interest environmental cases (1-2 NGOs).

There are a number of databases that help people find environmental lawyers. In case of business matters, e.g. application for a permit, complaint against an environmental penalty, etc. there are a number of internet based databases that enable searching the specialization of available licensed attorneys throughout the entire country. This can be supplemented by searching thematic pages of legal websites where prominent environmental lawyers can be found. In case of public interest matters, environmental lawyers can be found either directly on the internet, or via contacting environmental NGOs. The latter are definitely aware of the availability and contact details of the public interest environmental law offices. Finally, in case of searching for legal aid, the legal aid service of the Ministry of Administration and Justice operates a website where the database of legal aid lawyers and legal aid NGOs can be searched, however, this is not aided by a function of search for specialization.

IX. Evidence

Environmental cases before the court do not fall under a different regulation than regular civil law or administrative law cases. It means that according to the procedural rules, those have to provide evidence who are interested to prove something. It is most frequently the plaintiff. In Hungary, there is a system of free evidence, i.e. no proof has a predefined strength and any form of evidence (witness, expert opinion, visiting a location, documents, objects) can prove a standpoint in a court procedure. However, in environmental cases the most convincing is an expert opinion.

In line with the rule of free evidence, no single way of proof has a predefined value, i.e. any argument can be proven by any form of evidence if appropriate. The judge is not bound by any form of evidence but has to accept the reality of findings contained in the so-called public documents (közokirat) that were issued by authorities within their sphere of competence. Court are free in

conjunction with other evidence to evaluate the proof. In case an expert opinion is incomplete, unclear, or contradictory with itself or with another expert opinion, the original opinion has to be clarified by the expert but the court can also appoint a new expert. Parties to a court procedure are free to introduce new evidence, however, they are bound by a few basic rules:

- the evidence has to be introduced in time, i.e. it cannot result in extending the procedure in an unreasonable manner
- the court is obliged to refuse evidence if it was offered in unjustified delay or against the rules of good will litigation
- costs of evidence has to be borne by those who initiate proof, however, later the final bearing of the cost may change using the loser pays principle

The court usually does not initiate evidence, since the role of the court is to decide a legal dispute and not to uncover the ultimate truth. However, the court has to inform upon a targeted question of the parties what part of their argumentation still lacks sufficient evidence. In addition, the court in exceptional circumstances can initiate evidence in administrative court cases, such as when notices that the administrative act is null and void, in order to substantiate that finding.

An expert has to be involved into the procedure of evidence if there is need for a special knowledge on any topic of relevance that the judge does not hold (in fact, any non-legal issue). In this case, parties may request the court to mandate a judicial expert who is registered at the Ministry of Administration and Justice on the list of experts to provide an expert opinion. In case there is no such expert available, anyone having the necessary knowledge can be mandated by the court. Parties themselves can also mandate experts and submit private expert opinions to the court, however, their weight of proof in the decision-making process of the court is somewhat weaker than the officially mandated judicial expert opinion. Recent case law of the Supreme Court however acknowledged that such private expert opinions are not simply expressions of the parties' views but part of the pool of evidence.

Expert opinions (private and officially mandated alike) are not mandatory on the court in a way that the court may divert from them. However, their convincing power stems from their well substantiated nature and any diversion from the findings must be reasoned by the court, either by reference to proven facts, or to other expert opinions. Otherwise the court risks the annulment of the judgment by the superior court for not having conducted a proper process of evidencing.

X. Injunctive Relief

In case an administrative decision is appealed, the appeal has automatic suspensive effect and the rights granted by the decision cannot be exercised. The first instance decision-making organ, however, can declare its decision immediately enforceable if it is needed to prevent or remedy a life threatening or highly damaging situation, if national security, national defence and public order so requires, or a further law makes it possible for – inter alia – environmental, nature conservation, public health, historic monument protection or soil protection, etc. reason. A lawsuit filed against a final administrative decision has no automatic suspensive effect, however, in the motion or afterwards during the court case a request can be submitted to the court to suspend the enforceability of the disputed administrative decision. After receiving the request the court has to make a decision on the suspension within 8 days. Criteria to be taken into account during decision-making are: can the original situation be restored, will be omission of suspension cause more harm than the suspension would.

A request for injunction cannot be submitted before the main request (kereset) but only together with it or subsequently. Injunction can be granted if it is needed for preventing a directly threatening harm, the preservation of a situation giving rise to a legal dispute, the protection of rights of the claimant, and the harm caused by the measure does not exceed the advantages reached by the injunction. The court can make the injunction conditional upon a cross-undertaking in damages. The court has to decide in an expedited procedure on the injunction. The court's decision on the injunction can be appealed.

XI. Costs

In order to initiate a court proceeding, the applicant has to pay the court tax or duty (illeték). Later, during the procedure the costs of evidence have to be pre-paid (deposited at the court) by those initiating the evidence. In case a witness needs to travel to a hearing, those who initiated his/her audition have to bear the costs and pay it to the witness. Also those filing an appeal have to pay the appellate court tax (fellebbezési illeték). During the court process, each party is responsible for paying his/her own attorney fees. Finally, after the judgment the losing party has to pay the expenses paid by the winning party.

A regular court tax against an administrative decision is EUR 100. In private law cases, the court tax depends on the so-called pecuniary value of the case, e.g. the amount of compensation claimed from the defendant. The court tax is 6% of this value but minimum EUR 50 and maximum EUR 5000. Since there is no appeal in administrative court cases, there is no court tax to be paid in such cases. In private law cases, an appeal is 8% of the value of the value of the case but minimum EUR 50 and maximum EUR 8350. If a request for extraordinary remedy is submitted, its court tax is 10% of the value of the case but minimum EUR 165 and maximum EUR 11670.

In environmental cases, other cost categories can vary between extremes according to the following, which is an estimate based on regular practice:

- travel cost of witnesses: EUR 10 to 50
- fee for witness for lost income/salary: EUR 50 to 100
- costs of holding an on-site visit by the court: N/A
- expert opinion: real estate evaluation in compensation case: EUR 200 to 1000; health report in personality protection case: EUR 200 to 800; on-site air quality or noise emission monitoring in environmental case: EUR 1000 to 4000; on-site nature conservation monitoring EUR 4000 to 8000; reading extensive materials, e.g. an Environmental Impact Statement (környezeti hatástanulmány): EUR 1000 to 2000
- attorney fees are subject to agreement between the party and the attorney using marker prices, but may vary from EUR 40 for an hour of work to EUR 200, but can also apply a contingency fee method where 15 to 40 % from the successfully acquired amount is acceptable

A request for injunction is free of charge but the court may make the delivery of the injunction dependent on the payment of a bond or cross-undertaking in damages. This amount – especially in high profile environmental cases such as large scale infrastructure projects' EIA cases – may amount to EUR 4000 per day.

The bearing of the costs of litigation has to be defined in the judgment. The loser party is to be obliged to pay the costs of the winning party, with certain exceptions such as:

- in case the defendant has not given rise to the procedure and admits at the first hearing his/her duties the costs are to be borne by the applicant
- parties acting in the procedure unsuccessfully, with undue delay or missing deadlines, or causing unnecessary costs otherwise have to bear such costs
- in case someone files a lawsuit despite an agreement reached in a mediation procedure, can be ordered to pay regardless his/her success in the court case
- in case of partial win, the court defines the bearing of costs proportionate to the ratio of win/lose by a party
- in case this latter ratio is approximately even, the court may order that each party bear its own costs
- in case there is an amicus curiae in the case and its side wins, his/her costs have to be borne by the loser, but if its side loses, only those costs have to be borne by the amicus curies that arose due to its participation in the procedure

XII. Financial Assistance Mechanisms

There are two major types of fee waivers or allowances: those that do not require a decision from the court and those that do. Within those that do not need court decision some allowanced are dependent on the case type and some are on the type of applicants.

As for free allowances defined by law for case types, there are a number of procedures that can be started without having paid a court tax but only one type has environmental relevance: cases for enforcing freedom of information. Other types of cases do not require the prior payment of court tax, only the loser in the case will have to pay the court tax subsequently. Such types of cases with potential environmental relevance are

- compensation cases where the person who suffered damage had his/her life, integrity and health threatened
- personality rights protection cases
- compensation cases against public authorities
- administrative court cases against administrative decisions

Finally, there are cases where there is no prior but only subsequent payment of the costs of the procedure (költségfeljegyzési jog). Such cases with environmental relevance are the compensation cases for damage caused by mining. Also administrative court cases where the costs of evidence initiated by the defendant administrative organ are covered by this allowance.

Certain types of applicants are freed from paying court taxes, amongst others the Hungarian State, the municipalities, NGOs (associations and foundations if they have not realized income the preceding year from economic activity), nonprofit companies and the EU and its institutions.

The court with its decision can grant four types of cost allowances:

- permit for subsequent payment of the court tax if losing the case (illetékfeljegyzési jog): this applies if the prior payment of the court tax would mean a disproportionate burden taking into account his/her assets and incomes, especially if the court tax to be paid exceeds 25% of his/her annual per capita income before revenue taxing
- permit for subsequent payment of the costs of the procedure (költségfeljegyzési jog)
- full waiver from paying any costs of the procedure except the expenses of the other party in case of losing (teljes költségmentesség)
- partial waiver from paying some costs of the procedure except the expenses of the other party in case of losing (részleges költségmentesség)

The latter 3 types of allowances have their conditions defined in details, taking into account the assets as well as the income situation of this applying for it.

Legal aid is available in environmental matters, however, there is no specific legal aid for such cases. Natural persons as well as NGOs can benefit from legal aid that has two types: legal aid outside and within a judicial procedure. Civil and criminal procedures as well as extra-judicial legal advice and assistance in preparation of documents are all eligible for legal aid, except legal assistance to the founding of an NGO.

Outside a judicial procedure a beneficiary can have legal advice, assistance in preparing documents and help in accessing case files. Within a judicial procedure a beneficiary can have an attorney for the case. Conditions of benefiting from legal aid are that the applicant’s net monthly income does not exceed the amount of the so-called minimum old-age pension (öregségi nyugdíj mindenkori legkisebb összege = nyugdíjminimum) and has no assets. NGOs qualified as public interest (közhasznú) can benefit from legal aid in judicial procedures started for the protection of public interest upon the explicit entitlement given by law (cases against polluters started upon the Environmental Protection Act are such procedures).

Legal aid primarily covers the costs of a legal aid attorney in a case or the costs of a legal advisor if legal assistance is needed but no judicial proceeding is underway. However, while the legal representation in a court case is covered fully by the legal aid, in case of legal advice outside a court case the number of working hours of a legal expert to be spent on the matter is limited by the decision of the competent legal aid authority.

Legal aid providers have to be registered at the legal aid service of the government, and make a service contract with the government agency detailing their roles and responsibilities. The following can apply for registration as legal aid providers:

- attorneys
- attorney offices
- European Union lawyers working permanently in Hungary
- NGOs dealing with (human or basic) rights protection
- ethnic minority self-governing bodies
- universities providing legal education

A legal aid organization (e.g. an NGO) can apply for registration in case it has an office space suitable for meeting clients and has a service contract with an attorney made for a definite term that enables the attorney to provide legal service on behalf and upon the instructions of the legal air organization. It is extremely rare that environmental cases involve legal aid. Firstly, it is due to the fact that only environmental cases in the judicial phase can involve legal aid, and many environmental cases are decided on the administrative level, not entailing a court procedure. Secondly, there are not many legal aid lawyers or legal aid organizations (NGOs, universities, etc.) that specialize in environmental law. Thirdly, this opportunity is not widely known for the civil sector either.

There is a possibility to apply for pro bono legal assistance provided by law firms because more and more such firms are involved in these kinds of activities, in Hungary mostly upon the initiative of PILNET (formerly known as PILI). However, these law firms do not offer specialized environmental legal advice.

There are no environmental legal clinics in Hungary, only a Freedom of Information Legal Clinic network operated and coordinated by Open Society Justice Initiative. In this network, there are a few NGOs that offer clinical legal education for environmental or related freedom of information matters, such as EMLA (environmental) and Energia Klub (energy related environmental). Currently they are not available for the public but serve only students of the ELTE University Faculty of Law in order to enrich their extracurricular activities.

There are a few public interest environmental law organizations in Hungary, most notably EMLA and Reflex, while public interest environmental lawyers work for NGOs such as LMCS or Nimfea. These organizations and experts are available for the public and they apply their own principles in providing free of low-cost legal aid in environmental matters. Their contact details are online as well as accessible at environmental protection NGOs.

XIII.Timeliness

Administrative organs are obliged by the Administrative Procedure Act to deliver a decision within 30 days from receiving a request. In cases where the decision is needed to prevent a life threatening or a highly damaging situation, the decision has to be made in an expedited procedure. The head of the administrative authority may prolong the procedure before the end of the first 30-day period with an additional 30 days. If the authority fails to respect the time limits, it has to pay back the procedural fee to the applicant, and in case this delay is twice as long as the statutory deadline for decision-making, the payment to the applicant is double the procedural fee.

Courts must examine submitted documents within 30 days and make appropriate measures, e.g. order the applicant to complement its submissions. This applies also to motions starting lawsuits. Within the same 30 days also the date of the first hearing has to be set, informing the parties at least 15 days prior to the date. The first hearing has to be held within 4 months from the arrival of the motion to the court but within 9 months the latest. Subsequent hearings should be held within 4 months from the preceding trial. For declarations to be made by the parties, the court can set deadlines that are usually 15 days. Courts have to prepare a minutes of a court hearing (jegyzőkönyv) immediately, or if the hearing was recorded within 8 days from the day of hearing. The printed minutes have to be mailed to parties within 15 days. Parties may jointly ask the court at least 8 days before a hearing that the date of the hearing be postponed. If parties agree to halt the procedure, the case is terminated after 6 months unless any of the parties initiates the restart of the procedure at the court (szünetelés). Appeals against first instance judgments can be filed within 15 days from the delivery of the judgment to the superior court, while a request for extraordinary remedy (felülvizsgálati kérelem) can be filed within 60 days from the delivery of the final judgment to the Supreme Court (Kúria).

A typical duration of an environmental court case is the following:

- administrative court cases against administrative decisions regarding smaller scale projects: 1,5 to 2 years
- administrative court cases against administrative decisions regarding larger scale projects: 2 to 5 years
- private law cases against damage or harm done to the environment or nature: 2 to 3 years on the first instance, 1 to 2 years on the second instance, altogether 3 to 5 years
- private law cases for compensation of environmental harm: 1,5 to 2 years on the first instance, 1 to 2 years on the second instance, altogether 2,5 to 4 years

There is no statutory deadline for courts to deliver a judgment. Consequently, there are no sanctions against courts delivering a judgment in a non-timely manner. However, within the administration of the judicial branch, the National Judiciary Bureau (Országos Bírósági Hivatal) as well as all the heads of the courts are responsible for monitoring the keeping of procedural deadlines by the courts.

XIV. Other Issues

Environmental decisions are challenged in different stages of the procedure, depending upon the nature of person involved in the case. In case of private individuals, their majority reacts after a change in the environment happened, i.e. they want to be involved into procedures after a decision is made and developments on the ground visibly start to occur. On the contrary, environmental NGOs who have independent staff to monitor development decision-making usually get involved already in the permitting phase of cases, before a final decision is made in a matter. There are contrary examples, however, especially in EIA and IPPC procedures where – due to the stronger openness rules – also private individuals participate in the procedure in due time.

The public is not provided either comprehensible or easy-to-understand information about access to environmental justice in Hungary. Overall, there is low awareness of access to justice in environmental matters or in general in the population of Hungary. This is partly attributable to the very low level of capacity building programs managed by the government and to the relatively low priority attached to such matters in the government policy being continuous in this matter for decades already. There are sporadic information and little information on the Aarhus Convention on government websites and this is not augmented by practical information for the public to implement real access to justice.

ADR is existent in Hungary for solving conflicts of parties regarding their private law matters in the form of mediation. Mediation in Hungary follows the regular standard protocol of mediation as internationally adopted. Experts and third parties can participate in the mediation procedure upon the request or with the consent of the parties involved into mediation. Mediation ends with the

signing of an agreement, if the parties or a party requests its termination or within 4 months from the start of procedure. Mediation is not mandatory before starting a lawsuit, however, it has to be mentioned in the action starting a court case filed at the court. From July 2012 there is a special opportunity to do in-court mediation that is managed by a court clerk (bírósági titkár) upon a joint request of the parties. There is no legal possibility to have mediation between private parties and administrative authorities, therefore in environmental administrative cases mediation is not applied. Nevertheless, between private parties (including NGOs) mediation is available in environmental matters. However, it is hardly used, due perhaps to the lack of awareness of this legal opportunity or the lack of trust in alternative dispute resolution methods.

XV. Being a Foreigner

The Constitution (Alaptörvény) of Hungary having entered into force on 1 January 2012 in its chapter Freedom and Responsibility contains Article XV.2 that states that Hungary ensures the fundamental rights to everyone without any discrimination as to – amongst others – language, nationality or other status. In the Administrative Procedure Act of Hungary (Ket.), Article 2.1 states that parties in the administrative procedure are entitled to equal treatment and their cases have to be decided without unreasonable differentiation or bias. Interestingly, we cannot find any such provision in the Civil Procedure Act (Pp.), however, the courts are supposed to decide in an unbiased manner. Although the language of the court procedure is Hungarian, no one can suffer any harm from not knowing the language, states the Civil Procedure Act. Anyone can use his or her own language in the court procedure according to international agreements. If the exercise of these rights so requires, the court must involve and interpreter into the process. If the implementation of such rights guaranteed by international agreements necessitates the involvement of an interpreter, its costs are prepaid and borne by the State. Otherwise the costs of interpreter belong to the costs of the cases to be paid by the loser with the aforementioned exceptions.

VI. Transboundary Cases

Administrative cases that involve environmental issues in another country are regulated by the EIA Decree in line with the Espoo Convention. The Convention distinguishes between two types of procedures: when a country is an affected country or when it is a country of origin (of the environmental impact). Cases when Hungary is a country of origin have relevance here. In such cases, the regional Environmental Protection Agency informs the applicant and the Ministry of Environment, while the latter informs the Ministry of Environment of the affected country. The rest of the procedure follows a process defined by the two countries, however, there are some mandatory elements to this procedure:

- if the affected country requests, the international environmental impact assessment procedure has
- the applicant has to prepare in the language of the affected country or in English the international chapter and the non-technical summary of the environmental impact statement
- consultations start between the two countries
- comments can be submitted by the affected country as well as its pubic
- the decision of the environmental agency has to be communicated with the affected country

The public concerned has no specific notion applied in transboundary cases, and even the Environmental Protection Act Article 4.21 says only that those persons and organizations are the affected ones who live and act on the impact area. Based on this, as well as on the legal standing rules of the Administrative Procedure Act, we may conclude that also foreign public has legal standing according to the following:

- foreign individuals can be equally affected in any type of case just like Hungarian individuals, there is no difference between parties as to residence or domicile
- foreign NGOs (NGOs registered abroad) may have legal standing only in cases where international agreements so regulate, and in the environmental field it is the Espoo Convention; this convention guarantees that the country of origin has to provide an opportunity to the public in the areas likely to be affected to participate in procedures equivalent to that provided to the public of the country of origin; in other words, if an NGO has legal standing in Hungary, then a foreign NGO also has legal standing if its area of activity covers the affected area on the other, non-Hungarian side of the border

Once in the court procedure, a foreign individual or NGO has the same procedural rights and a local citizen or locally registered NGO, with only very few exceptions. E.g. free-of-charge litigation can only be awarded to Hungarian citizens, EU citizens or citizens of third countries staying lawfully in the EU. This for instance deprives citizens of Serbia and Ukraine of this opportunity, and the ones of Croatia until July 2013. Foreign applicants may be obliged by the court upon the request of the defendant to pay a deposit to cover the potential costs of the case for the case of losing it.

In administrative court cases (i.e. cases in which the procedural or substantive legality of an administrative decision is challenged before a court) the Hungarian courts have exclusive jurisdiction. In civil law cases, normally defendants are challenged before Hungarian courts according to the territorial jurisdictional rules of the Civil Procedure Act. Nevertheless, according to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in tort cases a person causing damage can be sued not only in the country of his or her domicile if the damage (including environmental damage) occurs or may occur in another Member State of the EU which may typically happen in transboundary environmental damage cases.

Related Links

- Constitution: http://www.kormany.hu/hu/mo/az-alaptorveny
- Laws: http://net.jogtar.hu/
- Legislature: http://www.parlament.hu/
- Government: http://www.kormany.hu/hu
- Judiciary: https://birosag.hu/en
- Prosecutor: http://eng.ugyeszseg.hu/
- Ombudsman: http://www.ajbh.hu/
- Data Protection Authority: http://www.naih.hu/
- Bar Association: http://www.magyarugyvedikamara.hu/
- Legal Aid: http://igazsagugyihivatal.gov.hu/jogi-segitsegnyujtas
- Aarhus Convention: http://gmo.kormany.hu/aarhusi-egyezmeny
- NGOs: http://www.emla.hu/

Last update: 14/09/2016