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Minor infringements in waste management

1. Introduction

The legislator obligated environmental authorities in Hungarian waste management regulation to dispense with fine in special cases. It is possible to dispense with fine, if the authority considers that the infringement is so minor that the application of penalty or measure is not required. Regulation, however, does not give any guideline or any objective starting point about the fact what kind of infringement can be considered minor. It became the task of the case-law to fill specific provision of the law with content. In my study I try to find solution in the light of judicial decisions whether authorities and, in the final judgement, courts manage to define aspects which take closer to the concept of minor infringements.

2. System and specifications of regulation

As it is commonly understood wastes are objects or materials which became superfluous for us and they will not be used any longer by anybody. However the concept has been changed on the impact of technical and industrial development as well as due to the consumer customs of today's societies and waste is primarily defined in the approach of material flows. The formulation of this definition is especially difficult task for legislator as there are many different kinds (metal, plastic, paper, etc.), states of matter, types (primarily, secondary, municipal, industrial, agricultural, etc.) and categories (hazardous or non-hazardous) of wastes. Up to the present there is no universal definition[1] of waste beyond the one in the directive[2] of the European Union according to which waste means any substance or object which the holder discards or intends or is required to discard.

Waste management is part of the environmental law in the Hungarian effective legal rules, and EU law[3] has a significant impact thereon as numerous legal rules[4] of the European Union regulate certain segments of waste management in regulation or

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[1] Fodor László: *Környezetjog*, Debrecen, Debreceni Egyetem Kiadó, 2014, 261.

[2] Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, Article 3 Point 1; HL L 102., 11.4.2006.

[3] According to the Communication from the Commission on the Mid-term review of the Sixth Community Environment Action Programme EU legislation lies behind some 80% of national environmental legislation (Sixth Community Enviroment Action Programme (COM) 2007 225. final 4.)

[4] Regulation No. 2006/1013/EC on shipments of waste, Directive No. 94/62/EC on packaging and packaging waste, Directive No. 1999/31/EC on the landfill of waste, Directive No. 2000/53/EC on end-of life vehicles, Directive No. 2002/96/EC on waste electrical and electronic equipment, Directive No. 2008/98/EC on waste and repealing certain Directives.

directive and has an impact on the Hungarian waste management. The concept of waste is defined by the EU law in consideration of the fact that it is impossible to give an exact definition or give a list of it. Accordingly, it is especially difficult for legal practice to find distinctive factors[5] between waste and non-waste (optionally by-product). There are a great number of court decisions[6] regarding this issue but the debate regarding distinction has not been settled in every case. The definition of waste is specific from the aspect that it has several subjective factors[7].

According to the Fundamental Law of Hungary Article XXI subsection (1) Hungary shall recognise and give effect to the right of everyone to a healthy environment. Subsecion (3) especially highlights in relation to waste – in a different way from the EU and effective legal regulation[8] – that the introduction of pollutant waste into the territory of Hungary for the purpose of disposal shall be prohibited.

The importance of regulations related to waste is reflected by the level of sources of law, i.e. waste management is defined in the Act No. CLXXXV of 2012 on waste.[9] Based on the authorization of the Act the Government decrees specify the diversified and detailed rules of this subject.

The system of sanctions related to the violation of waste management regulation is greatly fits into the institution of environmental sanctions defined by Hungarian legal rules. In this regard we can mention general reference to liability (under criminal law, civil law, administrative law and misdemeanour law) based on Article 101 subsection (1) of the Act No. LIII of 1995 on the General Environmental Protection Rules. These forms of liability may exist parallel[10] with the exception of misdemeanour. Within the administrative liability we have to distinguish the jurisdiction for order (suspension, restriction or prohibition of activity)[11] and the jurisdiction for penalty.

The waste management penalty has numerous similarity to the general features of environmental penalty, accordingly the penalty is objective based, it is applicable against natural persons, legal entities and organisations without legal personality and the amount is influenced by quantitative and qualitative factors as well as the volume of environment pollution and the risk to environment.[12] We have to say in that regard, however, that progressiveness and repetition is not possible.[13] In the system of

[5] Bándi Gyula: A hulladék fogalma egy aktuális jogesetben, *Európai Jog*, 2002/3, 38-40.

[6] Csák Csilla: A hulladék fogalmának értelmezése az uniós ítélkezési gyakorlat tükrében, in: http://www.matarka.hu/koz/ISSN_0866-6032/tomus_29_2_2011/ISSN_0866-6032_tomus_29_2_2011_423-434.pdf (20.04.2015.)

[7] Bándi Gyula (edit.): *Az Európai Bíróság környezetvédelmi ítélkezési gyakorlata*, Budapest, Szent István Társulat, 2008, 73-87.

[8] Fodor László: Az Alaptörvény esete a szennyező hulladékokkal és az európai jog, *Magyar Jog*, 2012/11, 648.

[9] Hereinafter referred to as Ht.

[10] According to Act No. II of 2012 on misdemeanors, misdemeanor procedure and registration system Article 2 subsection (4) it is not possible to establish misdemeanor liability once an administrative sectoral penalty was imposed on the person who is amenable to law.

[11] See division of orders by civil law Csák Csilla: *A környezetjogi felelősség magánjogi dogmatikája*, Miskolc, Miskolci Egyetem, 2012, 133-135.

[12] Bándi Gyula: *Környezetjog*, Budapest, Szent István Társulat, 2011, 332.

[13] Miklós László (edit.): *Környezetjog alapjai*, Szeged, SZTE ÁJK JATEPress, 2011, 172.

environmental liability each legal rule related to all environmental compartments (land, air, water, biodiversity and man-made environment) regulating penalty define sanctions objectively based on volume which is connected to pollutants above limit value in many cases.[14] The significance of the penalty established in administrative jurisdiction is that there is no need to examine the imputability of civil liability or the guilt of criminal liability. The explicit environmental objective being pursued is on the one hand to threaten with pecuniary disadvantage in order to observe environmental rules and on the other hand to level economy and mediating social standing.[15]

The Decree No. 56/1981 (XI.18.) MT of the Council of Ministers on the Control of the Production of Dangerous Waste Materials and Activities Relating to their Destruction was the first legal rule that formed the basis of waste management penalty. According to the statements of facts which forms the basis of sanctioning the manufacturer, with the exception of medical institution and private person, who violates the obligation of notification, collection, pretreatment, transportation and disposal is subject to pay fine. The first act for this legal instrument was the Act No. XLIII of 2000 on Waste Management[16]. Article 49 subsection (1) provides that anyone who by act or negligence (a) violates the provisions of waste management legislation or those of a relevant official ruling, or fails to perform or performs improperly his duties included in the above provisions, (b) carries on waste management activities bound to an official permit, approval or notification without an official permit, approval or notification, or in a manner deviating from them, (c) endangers or damages the environment by violating the provisions on environmental protection, must pay a waste management fine.

The Ht. (which is effective as of 1 January 2013) has similar provisions as Article 84. § subsection (1) as follows. The natural person or legal person, sole trader or organisation without legal personality who (a) violates the provisions of waste management legislation, directly applicable legal rules of the European Union or official ruling, (b) carries on waste management activities bound to an official permit, approval, registration or notification without an official permit, approval, registration or notification, or in a manner deviating from them or (c) does not inform or do not inform properly the environmental authority on production or formation of by-product, uses, distributes or store waste as product or by-product must pay a waste management fine.

Based on the foregoing the change in the act did not basically modify the system of sanctioning against those who violate the regulation of waste management. Parallel with the new regulation the detailed rules of waste management penalty have not been changed as they are regulated in Government Decree 271/2001. (XII.21.) Korm. rendelet[17] on the amount and application of waste management penalties. The legal rule provides for two different types of penalties. The first is a fixed amount

[14] Examples in the case of water pollution fine and channel fine: Government Decree 220/2004. (VII.21.) Korm. rendelet on the protection of surface waters quality, in the case of air protection fine: Government Decree 306/2010. (XII.23.) Korm. rendelet on air protection.
[15] Bándi Gyula: *Környezetvédelmi kézikönyv*, Budapest, KJK-KERSZÖV Kft., 2002, 269-274.
[16] Hereinafter referred to as Hgt.
[17] Hereinafter referred to as Government Decree.

related to administative statements of facts depending on the volume of waste calculated by a formula. The other one is based on the model defined in the Government Decree No. 102/1996 (VII.12.) Korm. rendelet on Hazardous Wastes replacing the Decree No. 56/1981 (XI.18.) MT of the Council of Ministers on the Control of the Production of Dangerous Waste Materials and Activities Relating to their Destruction.[18] The approach is the same to define the amount of penalty: base penalty defined in Hungarian forint depending on specific violation of law (A), modifying factor (M) depeding on the kind, seriousness and volume of violation of law as well as impact of waste on environment (danger, expedience and disposability and volume (mass), the repetition of violation of law and the aggravating multiplier (S) depending on the sensibility of the environment.[19]

The effective regulation specifies the sanction based on the formula as the main rule of the administrative liability.[20] The amount mainly depends on the amount of base penalty, which is decided in the frame of a restricted reconsideration by the authority. In this process the authority is to consider (a) the specific danger or endangering impact of infringing conduct, (b) impact of infringement on the waste management status of the country or the region, (c) volume of damage occurred and the possibility for restitution, (d) if there is no damage, any benefits or averted disadvantages that might accrue during the violation of law. The base penalty shall be defined according to the listed aspects for discretion between 25 and 100 percent of the maximum amount specified in the legal rule.[21]

Besides the penalty calculated by the formula there is the other type, the fixed amount [Section 2 subsection (5)-(8) of the Government Decree]. The regulation excluded special statements of facts from the scope of infringement where the penalty is calculated by the formula and the penalty of fixed amount shall be applied. These can be called administrative penalties as they are imposed due to the infringement of data provision and registration obligations. Among others, when the obligations to provide information, data and the obligations for registration, notification and preparation of specific waste management plan related to waste are infringed, the penalty shall be a fixed amount of Hungarian forint 200.000 without the specification of base penalty and multiplier. The similar legal rules shall be applied for special statements of facts related to the manufacturers' liability in the case of waste electrical and electronic equipment and for the manufacturers' and traders' liability in the case of batteries and accumulators.

[18] The penalty was calculated on the basis of the formula, the amount, however – according to the reconsideration by the authority – was influenced by the type of infringement, volume and classification of hazardous waste, and the seriousness of danger also shall be considered when infringement occurs in the case of hazardous waste (repetition, place).

[19] Bándi Gyula (edit.): *Hulladékgazdálkodási kézikönyv I.*, Budapest, Complex Kiadó, 2002, 321-327.

[20] Gellérthegyi István: *Környezetvédelmi jogi útmutató gazdálkodó szervezetek részére*, Budapest, HVG-ORAC Lap- és Könyvkiadó, 2002, 161-163.

[21] Gellérthegyi István: *Az engedély szerepe a környezetvédelemben*, Budapest, HVG-ORAC Lap- és Könyvkiadó, 2009, 112-116.

3. Examination of minor infringements in case of discretion as a legal instrument

Based on the short description of the administrative liability of environmental law it is obvious that the legislator intended to be objective. At the same time the procedural rules of the Government Decree obligated the environmental authority to consider the following issues: *"if the infringement is so minor in consideration of the weight of acts or omission, in consideration of the consequences of offence or infringement that no penalty or measure is required, penalty may be waived"* [Article 4 subsection (2) of the Government Decree]. The legislator established a legal instrument which is not specific for the environmental law but which was created for the environmental authorities at waste management regulation as a possibility of discretion.

This study is not suitable to analize this issue in depth but I have to note that discretion is not a new legal instrument in administrative jurisprudence. Discretion belongs to an old issue of the Hungarian jurisprudence which is practiced by public authorities and administrative authorities and organisations as law application agencies. Some years ago according to some authors, significant differences were unfolded in this regard despite the fact that a large body of literature exists.[22] There is a consolidated statement by now, the discretion by administrative bodies is based on the fact that the legislator is not able to cover all the social situations in a legal rule as they are so diverse and have many different aspects.[23] It is vital for the authorities in specific matters to ensure a certain scope of discretion when defining rights and liabilities. We can state that discretion is present at every stage of decision making in law application as it emerges when the statements of facts are established, when the related legal rule is interpreted or when decision is made.[24]

Discretion granted in Article 4 subsection (2) of the Government Decree belongs to discretion at decision making out of three different types (procedural discretion, substantive discretion or discretion at decision making). The authority can decide the way and content of measure in the discretion at decision making because it is possible to waive penalty if the infringement is so minor.[25]

Discretion has a more elaborate content in the regulation of administrative law nowadays. The basis for this is given by the fact that this branch of law intends to clarify the complex relationships of society. Consequently it is present in every sector of administration, i.e. in environmental management as well. The approach is obvious that the authority consider the matter when it decides to give permission for a specific activity or applies sanction based on the findings. This results from the fact that the decisions on the merits in law application can be revised by court and as such judicial application of law is a higher legal control over the aspects of discretion.[26] The case by case decision is a good example which was based on the fact that the environmental

[22] Molnár Miklós: Jogkövetői mérlegelés az államigazgatási jogban, *Jogtudományi Közlöny*, 1989/7, 377.
[23] Dezső Márta: Jogalkalmazás és mérlegelés, *Állam és igazgatás*, 1973/10, 901-902.
[24] Kiss László: Az államigazgatási mérlegelés néhány kérdése, *Állam és igazgatás*, 1978/7, 622.
[25] Dezső 1973, 903.
[26] Ficzere Lajos (edit.) *Közigazgatási jog – Általános rész*, Budapest, Osiris Kiadó, 2000, 332.

authority placed one organisation under procedure who delivered waste to another person without permission and placed the other organisation under procedure as well who took over waste without authorisation of the permission. The court considered the penalty unlawful in connection which the authority exempted the other organisation from the payment of penalty according to the same statement of facts based on Article 4 subsection (2) of the Government Decree.[27]

The specific provision of the legal rule under review granted a wide-ranging discretion for the environmental authority by the fact that it created a legal definition which is actually difficult to define abstractly and assigned an alternative decision making authority to it. As the minor infringement in waste management is not specified exactly by law, it is the task of the environmental authority as law application agency to fill it with content. The compex approach related to discretion includes the technical and professional examination of this branch of law which is typical in environmental law, and makes the activity of the authority even more complex.

There are several cases in the practice of Hungarian courts where the issue of discretion emerges. Formerly the Supreme Court (now it is called Curia) defined theoretical standpoints for several branches of administration related to the legality of discretion.[28] The court takes into consideration general requirements when speaking about waste management. Article 4 subsection (2) of Government Decree provides law application agencies with the authority of discretion and authorities to make decision in consideration of specific nature of each case in the frame of the decree. When exercising the authority of discretion, the environmental authority shall respect the limits given in the legal rule. According to the Act No. III of 1952 on Civil Procedure, Article 339/B. *"An administrative decision rendered on a discretionary basis shall be construed lawful if the administrative body has appropriately ascertained the relevant facts of the case, complied with the relevant rules of procedure, the points of discretion can be identified, and the justification of the decision demostrates causal relations as to the weighing of evidence."* The county court repeated the theoretical decision No. Kfv.IV.37.088/2008.[29] when stated in the statement of reasons that making a decision on a discretionary basis means a procedure when the law application agency selects the optimal solution for the specific case within the frame of the legal rule. The administrative decision rendered on a discretionary basis is lawful if four cumulative criteria – adequately establishing the facts, observing the rules of procedure, to be aware of the aspects of discretion, sound assessment of the evidence - are met. If any of these criteria is missing the administrative decision rendered on a discretionary basis is unlawful.[30] In relation to the referred case the court established that plaintiff took over altogether 2.617.172 ton waste between 6 and 8 June 2007 at its establishment within the frame of wholesale trade services of waste. The metal waste was collected at the establishment and put them into containers and transported without selection, pretreatment and recovery to the residence for processing. The

[27] Veszprémi Törvényszék, 2.K.20.150/2012/8.

[28] Cases No. Kfv.VI.38.109/2010. regarding exproriation issue, Kfv.V.35.124/2010. regarding taxation issue, Kfv.III.37.194/2009. regading immigration issue, Kfv.III.37-107/2004. consumer protection issue

[29] Published *Közigazgatási-gazdasági döntvénytár*, 2010/1. 42-45.

[30] Decision No. 2.K.22.006/2009/7. by Szabolcs-Szatmár-Bereg County Court which was maintained in force by the decision No. Kfv.VI.37.458/2010/6. by the Supreme Court

plaintiff did not have a permit for waste treatment at its establishment. A penalty was imposed due to waste treatment activity without permit as infringement. This was such an infringement which cannot be considered minor with regard to the period of the activity and the volume of the collected waste.

The process of discretion at the authority may not be finished by establishing waste management without permit. The authority must carry on examining the case in the light of these specific features. It cannot be enough to refer to a former court decision.[31] The aspects must be examined which are based on the specific characteristics of the case.

In the litigation which was set as an example such specific characteristics were to perform public service tasks, the infringing conduct violated public interest and environmental protection and the circumstances of waste disposal. The thorough assessment of modifying factors ("M" and "S") can help based on the court's guidelines when the above detailed penalty is calculated.

Based on the foregoing environmental authority must have a complete assessment of the activity qualified unlawful. The process and results must be detailed in the reasons of the decision according to the Act No. CXL of 2004 on the General Rules of Administrative Procedures and Services Article 72 subsection (1) Point ec). Without such reasons the court finds all decisions made on discretionary basis unlawful which were not supported by reasoning. The authority cannot replace the obligation of reasoning by the statements in the defence regarding the application of rules on minor infringement.[32]

4. Practice of Hungarian court in consideration of minor infringements

4.1. Waste management activity without permit

Based on the precautionary principle and preventive action waste management can only be carried out with permit as a matter of principle. Artile 14 subsections (1) and (2) of Hgt. collection, gathering, transportation, pre-processing, storage, recovery and disposal of waste are considered as waste treatment activities – if not otherwise provided for in an act, governmental decree or ministerial decree –, may be carried out exclusively with the permit of the environmental authority. Article 62 subsection (1) of Ht. has a similar formulation. Waste management activities may be carried out upon obtaining a waste management permit issued by the environmental protection authority or upon registration. In this regard the first group of unlawful conducts identified by the authorities is the activities without permit.

The type of waste which most often occures in the authority's practice is construction and demolition waste. A specific feature is that it cannot be sharply distinguished from waste in everyday life due to the inert characteristics. That is why there are several court decisions made on the treatment of construction and demolition waste without permit. This kind of waste is significant, which is reflected in Recital (22) of 2008/98/EC Directive of the European Parliament and of the Council on waste and

[31] Decision No. Kfv.II.37.519/2010/3.
[32] Decision No. Kfv.II.37.663/2011/3.

repealing certain Directives: *"In order to specify certain aspects of the definition of waste, this Directive should clarify when certain waste ceases to be waste, laying down end-of-waste criteria that provide a high level of environmental protection and an environmental and economic benefit; among others, construction and demolition waste, […]."*

In the court case under review the organisation which was placed under sanction wanted to fill a clay-pit with construction and demolition waste and to set up several facilities (football pitch and tennis court) on the property. All these activities were done without the permit to be issued by the environmental authority. The authority at first instance imposed a waste management penalty on the infringer at HUF 143,637,075 for unlowful disposal of non-hazardous waste in a decision. The court – in line with joint Decree 45/2004. (VII.26.) BM-KvVM on detailed rules for the waste treatment of construction and demolition waste – established that the material coming from construction becomes waste when it is superfluous for the holder and he/she cannot use it for other way. This environmental legal "quality" during the construction activity and even before the handing over occurred and maintained during the taking over. When excluding the minor infringement, the authority did not consider only the treatment (fill-in) without permission but the period of unlawful conduct (between 2001-2007) as a significant aspect. Besides, the sifnificant volume of construction and demolition waste should also be considered. The company sanctioned collected 39,552 tons waste, stored and disposed uncontrolled from an environmental point of view. In consideration of all these the infringement cannot be considered minor and there is no reason to waive the penalty.[33]

The court made a similar decision in another case where the plaintiff under procedure operated waste transfer station and pre-treated the collected waste without environmental permit. The facility satisfied the environmental protection requirements but the plaintiff accepted 6.771 ton mixed municipal waste and in this way violated the law which could not be considered minor. The decision was reasoned by the fact that there is a significant environmental public interest to carry out waste management activity in line with the legal rules. The activity performed without permit is an infringement which must be sanctioned. In this case the fact that the plaintiff was carrying out this activity for years was an aspect for consideration and the legal rules were infringed in connection with a great volume of colledted waste. An additional aspect whether the infringement was accompanies by negative environmental consequences – according to court – can only be taken into consideration when the amount of the penalty is established.[34]

In the cases above the infringements connected to permitting procedures were examined which violated waste treatment or impacted the status of environment. The activity without permit was examined in court practice in accordance with the same aspects irrespective of the fact which form of infringement in Article 14 subsection (1) of Hgt. was made. In another case the authority established from the documents on demolition of buildings that the economic company under procedure did not hand over 2.272 m^3 concrete shred and 3.314 m^3 mixed construction and demolition waste to the person entitled but delivered to a farm appointed by the municipality. The court

[33] Decision No. 13.K. 33.499/2008/8. of Capital Court of Budapest
[34] Decision No. 9.K.23.472/2011/12. of County Court of Békés

established that delivery which is subject to permit cannot be considered minor infringement in connection to waste treatment without permit and penalty may not be ignored.[35]

From the formulation of Article 14 subsection (2) of Hgt. did not only result that waste management activity may be a carried out with permit but final permit must be issued for the entire period of operation. In other type of court decisions the persons in waste management carried out activities when they did not have final permit any longer or have not got final permit yet. The organisations who were imposed penalty gave more or less the same reasons. They carried out the same activity without permit and they did not contaminate the environment just as they did with permit. Their infringements were considered minor as they committed small mistakes during their activity. The court was in the opinion that these reasons cannot be accepted. The organisation which was imposed penalty used to have permit but it was negligent and failed to renew the permit, which was not committed deliberately. At the same time it observed the legal rules and provided data during the activity without permit. It was well grounded that the authority sanctioned the organisation as the activity without permit cannot be considered minor infringement irrespective of the fact why the plaintiff failed to renew the permit or get a new one. The "intentionality" or "negligence" which the plaintiff referred to is of no significance. Such type of differentiation related to liability is not provided either in Hgt. or the Government Decree. According to the court in the review procedure the county court properly referred to the fact that the existence of a former permit cannot exclude penalty as plaintiff carried out the activity without permit after the expiration of former permit. The Hgt. sanctions the activity without permit, that is why it is of no significance whether the plaintiff observed other legal rules during the activity.[36]

The Supreme Court further clarified the aspects to be considered when waste facilities operate temporarily without permit. A latter decision of the Supreme Court is based on the above mentioned aspects when established that the big volume of waste (collection and emptying 3.240 ton sewage sludge) treated without permit and the lack of permit can be the aspects of discretion for minor infringement and for the application of penalty. However, the Supreme Court defined new aspects of consideration, i.e. clarified the reasons formulated in former legal cases. Based on the recent decision the deliberate violation of law and the infringement of law as a result of negligence cannot be equally weighted at careful consideration. At the same time it is important to make difference between the violation of law which was committed without permit when the operator did not even submit the application for permit and the infringement of law which was committed after the expiration of permit without deliberate conduct. The plaintiff under sanctioning procedure had reliable basis to state that it observed the legal rules when carried out the activity, which was not disputed by the environmental authority. Such aspects shall be examined, considered and assessed when minor infringement, penalty or is established.[37] It must be emphasized in the

[35] Decision No. 21.K.21.787/2009/7. of County Court of Fejér, which was maintained in force by the decision No. Kfv.VI.37.795/2010/9. of the Supreme Court.
[36] Decision No. Kfv.II.37.932/2010/5.
[37] Decision No. Kfv.VI.37.271/2011/6.

specific case the law was violated by collecting waste in settlements which do not have public sewage network. It was such a public service which was permanent and indispensible for several settlements. Such circumstances made the case and its consideration specific. However, it must be highlighted that the referred reasons are not in line with the establishments related to the objectiveness of administrative liability.[38] The above mentioned aspects gave the case subjective elements in the consideration process, which is understandable but does not clearly follow from the legal rules.

4.2. Gravity of infringment in the case of activity different from the permit

The issue may conclude from the examination of the activity without permit what is the role of minor infringement when the waste related operator deviates from the permit. Is it possible to omit penalty if the holder steps out of the frame of the related authority decision, it does not observe one or several provisions or exceeds the specific values and thresholds? In the cases under review the plaintiff sanctioned with penalty disposed more than permitted in the case of two types of waste, collected special waste from settlements where it did not have permit for the specific period of time and it did not have permit at all for one specific type of waste, yet it disposed on the landfill of waste. With regard to exceeding the volume the court established that the plaintiff did not violate the environmental interset of the country, it did not commit endangering or damaging activity by depositing a volume deviated from the permit. At the same time the activity of the waste related operator collecting special waste from settlements and disposing waste on the landfill not specified in the permit did not endanger or damage environment. The court however stated that there is significant environmental public interest to carry out waste management within legal frame. One of the most important conditions is to have the permit to carry out such activities. The plaintiff fined by the authority did not have permit for specific region and for specific types of waste. The failure to acquisite this environmental permit is an infringement which cannot be quailified minor and penalty may not be omitted.

Regarding the case above the court acting in review procedure added to the reasons of the county court that the plaintiff deals with waste treatment for years and knows exactly the conditions of permission procedure and lawful operation; it is aware of the fact what area, categories of waste and volume are specified in the permit issued by the authority.[39] The courts establishments on these topics are accurate. This can be concluded from the fact that a final decision of the authority gives objective limits to the holder. So it is legitimate to expect every holder to be aware of the limits of the specific permit and perform the activity within such frames.

[38] Bándi 2011, 332.
[39] Decision No. Kfv.II.37.903/2009/5.

4.3. Administrative infringements

Article 2 subsection (5) to (8) of the Government Decree defined the statements of facts when the authority must impose a specific amount of penalty against the infringer. The legislator defined a specific amount of penalty to each statement of fact. The administrative obligations connected to waste management can be summarized that the operators acting under such obligation must perform data content by specific deadline and it also contains record keeping with special data. Particular attention must be paid for the establishment of minor infringements due the great number of reporting organisations which belong to this segment of waste management.

The most common cases can be the omission, late performance or defective execution of data provision by deadline. After the Government Decree came into force, the court had to give opinion relatively soon on these infringements. As a matter of principle defined in Article 10 of the 164/2003. (X.18.) Government Decree[40] on the obligation of waste related record keeping and data provision which was effective at the time of performing the infingements the obligors subject to regular reporting requirements shall supply data annually on the generated waste until the first of March after the year under review. Based on Article 2 subsection (5) of the Government Decree the authority levies HUF 200.000 penalty without the multiplier if the obligor omits the obligation to provide information, supply data and keeping record.

According to the non-disputed statement of fact the plaintiff omitted the obligation of data supply then partially substituted after a call. After the decision at first instance was sent to the obligor, it submitted the missing data sheets and requested to release the penailty in the amount of HUF 200.000. The plaintiff stated that the minor infringement was committed by the omission. The Supreme Court established that the plaintiff missed data supply and the notification obligation by deadline specified by legal rules, the correction and replacement of obligation was performed well after the deadline specified by legal rules in fact after the decision at first instance was made in the frame of the appeal proceedings. As the deadline specified by legal rules expired without performing the obligation, it was lawful to impose waste management penalty.

The decision is important on the one hand because the court established here that it is not possible for the autority to consider the penalty and reduce the amount if the obligation of data supply is failed. The court on the other hand empasized with regard to minor infringement that the legistator considered the failure of data supply obligation so serious violation of law that in the first sentence of Article 2 subsection (5) of the Government Decree specified it as the basis of imposing a fixed amount of penalty. The minor infringement as the condition of non-imposition of penalty cannot be applicable in this case.[41] According to such reasoning there is no point to use the explanation that the organisation did not gain any advantage, caused any damage, directly endangered the environment or did not have an impact on the waste management status of the region by late supply of data.[42]

[40] Article 21 of the 440/2012. (XII.29.) Government Decree repealed it as of 1 January 2013
[41] Decision No. Kfv.IV.37.627/2008/4.
[42] Decision No. 5.K.20.200/2010/4. of Csongrád County Court

4.4. Infringement caused with several statements of facts

The aspects of consideration are specifically used in the sanctioned legal cases, where several statements of facts were established. The judicial investigation whether minor infringement can be considered and to what extent by the authority shall be started at the character of regulation. As it was earlier discussed first the base penalty must be specified regarding the infringements in the frame of non-administrative violation of law. The amount shall be defined with the percentage between 25 and 100 by the authority in consideration of hazard, impact on waste management status, possible benefits gained by the infringement or averted disadvantages. Then the application of modifying factors (volume of waste, repetition of infringement, ets.) is examined. According to the Government Decree penalty may be imposed on the basis of several statements of facts. In the case of the most serious statement of facts the highest amount of penalty can be raised by maximum half of the amount. [Article 3, Subsection (6)] i.e. the authority selects the most serious statement of facts and gives reasons and multiplies the 100 % base penalty with a number between 1 and 1.5.

The plaintiff placed under the sanctioning procedure handed over 600 m^3 construction waste produced from its activity to a party without waste treatment permit and 2272 m^3 selected and grounded concrete produced from demolition activity and asphalt waste were used for its own construction activity for installation to road-bed and site design at the same time it did not keep records according to Government Decree 164/2003. (X.18.) Korm. rendelet and the annual data supply obligation was substituted additionally. Out of these three statements of facts the authority qualified the activity without waste treatment permit the most serious infringement and imposed the plaintiff to pay HUF 38.093.463 waste management penalty. The court first gave the reasons that the plaintiff did not dispute the fact in the administrative decision and the authority established the most serious statements of facts correctly. The organisation violated the legal rules in several cases and conducted the activity without permission. This infringement which was qualified the most serious violation of law by the environmental authority cannot be considered such a minor infringement that the application of penalty or measure is not required. Consequently it was not possible to omit the penalty.[43] In another case the plaintiff who doubted the lawfulness of the administrative decision transported 1.325.628 ton waste under 17 01 07 EWC code. It had waste transport permit but this type of waste was not included in the permit. As a result it transported the waste under this EWC code without permit. It also violated the law by the fact that the waste management plan was submitted to the authority beyond deadline. The authority considered the transport without permit more serious infringement than the late submission of the waste management plan, and it was not possible to consider minor infringement with reference to several court decision made earlier.[44]

[43] Decision No. 7.K.21.221/2009/8. of Zala County Court and Decision No. 8.K.22.029/2010/12. of Fejér County Court, which has the same reasons

[44] Decision No. 8.K.22.055/2011/6. of the Székesfehérvár General Court, which was maintained in force by the decision No Kfv.II.37.597/2012/8.of the Supreme Court

Based on the above referred decisions there is no doubt that the minor infringement must be examined when several statements of facts are established in sanctioning procedures. These decisions do not give reasons in this regard, other court decisions analize the basis of this interpretation in details when several statements of facts are committed. As Article 4 of the Government Decree specifies the procedural rules to be applicable for every sanctioning procedure without restrective and disqualifying provision, the consideration of minor infringement cannot be connected to or disqualified with regard to special violation of law, the consideration shall be applied to all the cases in the provision. If there is no disqualifying provision the penalty may be omitted even if there are several statements of facts.[45]

5. Summary

Based on the referred decisions the court practice reflects that the environmental authorities were definitely empowered to omit penalty if they consider the case to be minor infringement. The legislator, however, did not fill the definition with content and did not give a basis for comparison. There is no similar legal instrument in the environmental law, consequently the authority and court practice temted to fill it with content. This area of law knows the minimum amount of penatly to be imposed. According to Article 34 subsection (5) of the Government Decree 220/2004. (VII.21.) Korm. rendelet concerning the rules of the protection of surface water quality water pollution fine or channel fine shall not be imposed if the calculated penalty is less than HUF 50.000 per discharge. The legislator did not provide such objective legal rules for waste management penalty. It is advisable to reconsider this kind of solution by the legislator in case of re-codification. As a criticism of the regulation this issue is regulated twice in the effective legal rules when Article 86 subsection (3) of Ht. repeated the provision of the government decree. So the same regulations are present at two levels of legal resources.

Each court decision under review examined the reason of omission from negative point of view as every case starts from the result that the authority did not consider the infringement minor.

This provision of the Government Decree since it entered into force 1 January 2012 has not been changed. The court practice was not able to give a unified interpretation of the related provisions for certain cases in the past large decade. It was able to give legal interpretation for such statements of facts in the frame of administrative infringements where there is a clear difference between minor and non-minor infringements. The failure to fulfill administrative obligations may not be minor as the legislator specified sanctions for these cases. If the obligation in question is not complied with precisely, the examination of the rule related to minor infringement has rather a supplementary and reinforcing role. This comes from the fact that the authority may establish the penalty in the maximum amount of HUF 200.000 if the data supply, record keeping and notification obligations are not complied with precisely. This amount can range between HUF 0 to HUF 200.000 depending on the seriousness of infringement. Theoretically it is possible to set the penalty in HUF 0 to which

[45] Decision No. Kfv.III.37.770/2012/6.

maximum the establishment of minor infringement can be supplemented according to Article 4 subsection (2).

The application and the interpretation of law are not unified and it is sometimes ambiguous in the case of infringements caused without permit and in a manner deviating from them. After the legal rule entered into force, according to the court decisions the fact that an organisation operated without permit excluded the establishment of minor infringement, while the decisions made later interpreted Article 4 subsection (2) more nuanced. It is seen that the courts have no unified standpoint which cases fall under the scope that the legislator should define in an issue which contains serious technical elements. This was especially a difficult task in the cases when the authorities sanctioned the organisation carrying on waste management activities due to operation without permit for shorter or longer period of time.

When the waste management activity is carried out without permit, it is a principle that there is a significant environmental public interest connected to the permission of the activity. As the legislator did not make difference between the activities acting without permit, it is not justified to examine why the operator has no permit. The activity without permit, however, does not exclude the fact that the operator commits minor infringement with the unlawful conduct. In such cases there is a need to investigate further aspects.

As the examination of minor infringement is regulated by the Government Decree in the chapter of procedural rules, the court concluded correctly with the sytematic interpretation that minor infringement must be examined in the case of every statement of facts by the authority. This standpoint can be critized by the fact that the legal interpretation made according to this reasoning is not in line with the provision in Article 3 subsection (6) as in the case of the most serious statement of facts the highest amount of penalty can be raised by maximum half of the amount if penalty may be imposed on the basis of several statements of facts according to the Government Decree. De lege ferenda in the case of a possible re-codification this requirement could be a good basis for the reasoning, i.e. the infringement cannot be minor and should be counted out of this scope if several statements of facts are committed by the organisation related to waste management.