

# References to the European Convention on Human Rights and to relevant EU legislation and practice from the CJEU

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**Administrative sanctions - orders and execution measures -  
in case of environmental infringements**  
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**ECHR?**

**EU LAW?**

**Set of general guarantees  
Rights of individuals +  
duties of the state  
Last resort**

**Harmonised rules (liability,  
controls,...)  
Set of guarantees (rights of  
individuals) within EU law**



## **ECHR?**

**RIGHTS OF INDIVIDUALS AND  
CORRESPONDING DUTIES OF  
THE STATES**

## **EU LAW?**

**HARMONISED RULES ON LIABILITY  
AND CONTROL**

**LIABILITY OF THE MEMBER STATES**

- **A particular protective measure is found illegal.**  
Who is liable and based on which criteria (significance of the breach, causal link, culpability)?
- **A national authority obtained evidence during inspection on site.**  
Are there any requirements regarding inspections / controls in the EU law?
- **A gold mine is operating without permission and causes harm to the local community.** Is there any obligation for the authority / the court to step in and act?
- **A national company / natural person violates the EU law/national law implementing the EU law and commits an offense /a crime.**  
Are there any specific requirements of the EU law/ECHR as regards liability or administrative / criminal proceedings?



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- **A particular protective measure is found illegal.**

Who is liable and based on which criteria (significance of the breach, causal link, culpability)?

- **It is an EU measure**


- Sufficiently serious breach, conditions based on the EU law and CJEU case law (see C-46/93 and C-48/93, C-352/98, C-312/00, C-122/01, T-561/08, T-42/04)


- **It is a national measure based on the EU law**


- Sufficiently serious breach, conditions based on the national law

- **It is a national measure based on national law**

- Seriousness of breach and conditions based on the national law

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- **A national authority obtained evidence during inspection on site.** Are there any requirements regarding inspections / controls in the EU law?
  - **Yes, but no comprehensive rules across the EU environmental law. It depends on the particular object of control.**

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- **A gold mine is operating without permission and causes harm to the local community.** Is there any obligation for the authority / the court to step in and act?
  - Yes – general obligations of the MS to implement and enforce the EU law (Art 4/3 TFEU) + specific obligations
  - Yes – general obligation to protect the rights of the individuals (ECHR)

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- **A national company / natural person violates the EU law/national law implementing the EU law and commits an offense /a crime.** Are there any specific requirements of the EU law/ECHR as regards sanctions or administrative / criminal proceedings?
  - YES – partial harmonisation in the EU law + the EU Charter
  - YES – ECHR: principles of criminal punishment





***LEGAL FRAMEWORK: EU LAW***

**LIABILITY OF THE  
MEMBER STATES**

**LIABILITY OF  
INDIVIDUALS**

**CONTROL**

**CONTROL**

**SANCTIONS**

**SANCTIONS**

**PRIMARY EU LAW**

**SECONDARY EU LAW + EU CHARTER**



## *LIABILITY OF THE MS TO THE EU*

### LIABILITY OF THE MEMBER STATES

- Cooperation
- Reports

### CONTROL

- Indirect
- Infringement procedure
- EU Pilot

### SANCTIONS

- CJEU



## ***LIABILITY OF THE MS TO THE EU***

### **SPECIFICS OF ENVIRONMENTAL PROTECTION**

#### **LIABILITY OF THE MEMBER STATES**

- Cooperation
- Reports

- Nature and *vis maior*?
- Resistance of public (C-121/07)

#### **CONTROL**

- Indirect
- Infringement procedure
- EU Pilot

- Facts
- Burden of proof (C-335/2007)

#### **SANCTIONS**

- CJEU

- Systematic failure
- Long-lasting breach (C-494/01, C-265/95, C-420/02, C-342/05)



## *LIABILITY OF THE MS TO THE EU CITIZENS*

### LIABILITY OF THE MEMBER STATES

- **Breach of the EU law**
- C-46/93 and C-48/93 (Brasserie): Sufficiently serious breach (for more see C-424/97, C-118/00, C-63/01)

### CONTROL

- **Judicial control**
- **C-355/04 P (Segi and Others v Council):** „...it is for the Member States and, in particular, their courts and tribunals, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the lawfulness of any decision or other national measure relating to the drawing up of an act of the European Union or to its application to them and to seek compensation for any loss suffered.“

### SANCTIONS

- **Damages**
- *Francovich* (C-6/90 and C-9/90): no regulation necessary (for more see C-201/02 and C-420/11 – EIA)



***LIABILITY OF INDIVIDUALS***

**LIABILITY OF  
INDIVIDUALS**

**CONTROL**

**SANCTIONS**



## *HARMONISATION OF CONTROLS (INSPECTIONS)*

### 0) Criminal prosecution

### 1) Direct controls by the EU authorities

#### a) Without a necessary consent of the MS

- Art. 101 and 102 TFEU (Competition law), gas trade, fuels and biofuels, pharmaceuticals
- Regulation 2185/96 (Customs)
- Regulation 1073 /1999 (OLAF economic crimes)
  
- ENVIRONMENTAL LAW:
  - **DIRECT CONTROLS:** Regulation 1224/2009 (common fisheries policy)
  - **CONTROL OF CONTROLS:** Directive 2010/64/EU, Art. 35/1 (protection of animals used for scientific purposes) – competence of the Commission to carry out inspection provided there are reasonable doubts
  - **COOPERATIVE CONTROL BUT SEPARATE COMPETENCE TO GATHER INFORMATION:** Regulation 1005/09, Art. 28 (protection of the ozone layer)

#### b) With the consent of the MS

- Fact finding missions (126, 258 TFEU), no framework, C-387/97 (Waste in Crete), C-103/00 (Caretta caretta).



## ***HARMONISATION OF CONTROLS (INSPECTIONS)***

### **1) Controls by the national authorities**

- **Comprehensive directive proposed by the Parliament but denied by the Council and the Commission**
- **Sophisticated rules concerning food safety (Regulation 882/2006, Directive 90/425/EEC)**

### **ENVIRONMENTAL LAW:**

- **Art. 20 Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances**
- **Art. 23 Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)**
- **Art. 23 Directive 2010/75/EU on industrial emissions (IED)**
- **Art. 34, 35 Directive 2010/64/EU on protection of animals used for scientific purposes**
- **Art. 15 Directive 2009/31/EC on the geological storage of carbon dioxide**
- **Art. 28 Regulation 1005/2009 on substances that deplete the ozone layer**
  
- **T-139/06: Reasonable doubts switch burden of proof to the MS**
- **C-297/05: Excessive controls and free trade**



## ***LIABILITY OF INDIVIDUALS***

### **1) Duty of cooperation of the member states**

Geelhoed in C-304/02:

*Member States are under a general obligation under Article 10 EC to take all measures necessary to ensure that Community law is applied and enforced effectively and that its 'effet utile' is achieved.(...) to ensure 'that infringements of Community law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive.*

### **2) General systems of liability**

- Directive 2004/35/EC **on environmental liability** with regard to the prevention and remedying of environmental damage (ELD)
- Directive 2008/99/EC on the **protection of the environment through criminal law**

### **3) Particular requirements**

Numerous directives require MS to establish 1) effective system of sanctions, 2) effective system of sanctions with particular sanctions and measures (withdrawal of permit, measures to ensure that compliance is restored within the shortest possible time)





## ***ANYTHING SIMILAR IN THE ECHR LAW?***

### **Duties of the state**

#### **Rightful balance between interests of society and individual**

López Ostra (16798/90)

Powell a Rayner (9310/81)

#### **To deal with illegal situation (to provide effective remedy)**

Fadeyeva (55723/00)

#### **To establish effective sanctions**

Bor (50474/08)

*existence of a sanction system is not enough if it is not applied in a timely and effective manner*

#### **But not environment itself**

Kyrtatos (41666/98)



## *HARMONISATION OF PENALTIES AND SENTENCING*

### **1) Yes - requirement to define what is crime and apply certain administrative or criminal penalties, principles of sentencing**

- **What is a crime? (applicability – principles of legality, presumption of innocence, public hearing)**
- **Non bis in idem**
- **Proportionality**

### **2) No - the determination of the type and level of the criminal penalties to be applied**

- **See C-440/05, Art. 83/2 TFEU**

### **Why does it matter in environmental cases?**

- **Usually administrative liability applies but other regimes of liability must be taken into account**
- **Variety of penalties**
- **Often shared competence among multiple authorities**
- **Often multiple offenders**
- **Frequent amendments to the regulation**

## WHAT IS A CRIMINAL CHARGE AND SANCTION?

### **ECHR:**

- autonomous concept
- *Engel criteria*: the scope of the rules that have been violated, purpose of the sanction, (punitive and deterrent), severity of the sanction (repleacable by imprisonment?)
- Administrative fines, tax surcharges
- Penalty x measure: Revocation of the planning permit in Morscher (54039/00)

### **CJEU:**

Confirmed in C-45/08 (Spector Photo Group), C-60/12 (Baláž)

Penalty x measure, C-210/00 (Käserei Champignon Hofmeister – agricultural aid scheme, not penalty if agreed upon, for example blacklisting)

## PRINCIPLE OF LEGALITY

### **ECHR:**

Art. 7

### **CJEU:**

C-549/09 (Arubis Bulgaria): Principle of legality is a general principle of EU law and precludes imposing sanction by the MS not recognized in the national law. **Now Art. 49 of the EU Charter**

C-210/00 (Käserei Champignon Hofmeister): Clear and unambiguous legal basis

## FULL JURISDICTION

### **ECHR:**

Oerlemans (12565/86): Full jurisdiction means the power to assess both facts and the merits of the case, and use the general principles of law

Menari (43509/08): Administrative and judicial part to be seen as one

### **CJEU:**

So far full jurisdiction of the CJEU to review EU acts

## NON BIS IN IDEM

### **CJEU:**

C-436/04 (Van Esbroeck): Charges in multiple MS, non bis in idem applies

Art. 50 Charter

### **ECHR:**

A. and B. v Norway (24130/11 and 29758/11):

double penalty is permissible if it is foreseeable for the perpetrators, and the second sanction is taken into account in proceedings before administrative authorities or courts proceedings, especially if the penalty was imposed earlier, so the sanctions in their the summary is not unjust and disproportionate

Reference to C-617/10 (Åkerberg Fransson), Johannesson and Others v. Iceland (22007/11)

## IDEM

ECHR:

Zolotukhin v. Russia (14939/03):

- Identity on the legal classification x identity of the facts irrespective of their legal characterisation
- *Article 4 of Protocol No. 7 should be construed as prohibiting the prosecution or trial of an individual for a second offence in so far as it arose from identical facts or facts that were “substantially” the same as those underlying the first offence.*
- Boman v. Finland (41604/11): the two proceedings, namely the criminal proceedings against the applicant and the proceedings to impose a driving ban, were intrinsically linked together, in substance and in time

## PROPORTIONALITY

### **ECHR:**

Jussila (73053/01): VAT and an additional 10% surcharge (no violation)

### **CJEU**

**Art. 13/2 TEU:** General principle of EU law

**Principle of proportionality applies to administrative sentencing...**

*(Urbán (C-210/10, para. 23 and cited case law).*

**... including method of determining the sanction, taking account of the circumstances of the wrongful act and taking into account the nature and gravity of the breach of the duty for which the sanction is imposed.**

*Rodopi-M 91 (C-259/12, para 38 and cited case law),*



## CJEU ON PROPORTIONALITY

- **C-487/14 (Total Waste Recycling)** - Point of entry different from that specified in the notification and in the prior consent

*Article 50(1) of Regulation No 1013/2006, as amended by Regulation (EC) No 669/2008, according to which the penalties applied by the Member States for infringement of the provisions of that regulation must be proportionate, must be interpreted as meaning that the imposition of a fine penalising the illegal shipment of waste, such as that referred to in Annex IV to that regulation, in the country of transit at a border crossing point which differs from that provided in the notification document which had been consented to by the competent authorities, of which the basic amount is the same as the fine imposed for a breach of the requirement to obtain consent and to give prior notification in writing, is to be considered to be proportionate only if the circumstances of the infringement make it possible to find that they involve equally serious infringements. It is for the national court to determine, by taking into account all the factual and legal circumstances of the case before it, and, in particular, the risks which may be created by that infringement in the field of the protection of the environment and human health, whether the amount of the penalty does not go beyond what is necessary to attain the objectives of ensuring a high level of protection of the environment and human health.*



## CJEU ON PROPORTIONALITY

- **C-487/14 (Total Waste Recycling)** - Point of entry different from that specified in the notification and in the prior consent
- The Court has made reference to the principle of a high level of protection. The penalty should not, according to its conclusion, go beyond what is necessary to attain objectives of ensuring a high level of protection of the environment and human health. This is a good example of the application of the general principles set out in Article 191 (2) TFEU.



## CJEU ON PROPORTIONALITY

**C-580/14 (Sandra Bitter)**

**C-203/12 (Billerud Karlsborg a Billerud Skärblacka)**

- Directive 2003/87/EC (Scheme for greenhouse gas emission allowance trading)
- *During the three-year period beginning 1 January 2005, Member States shall apply a lower excess emissions penalty of EUR 40 for each tonne of carbon dioxide equivalent emitted by that installation for which the operator has not surrendered allowances.*
- *CJEU:*
- *No moderation, wide discretion of the EU legislator*
- *necessary in the pursuit of the legitimate objective of establishing an efficient carbon dioxide equivalent allowance trading scheme*

## CAUSAL LINK

ECHR: strict and traditional if there is a claim for material damage  
Tătar (67021/01)

But excessive in claims for non-material damage

Taşkin (46117/99), Okyay (36220/97), Giacomelli (59909/00),  
Brândușe (6586/03).

However, not for future and not actio popularis

Asselbourg (29121/95)

**THANK YOU FOR YOUR ATTENTION!**

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