



European Union Action to
Fight Environmental Crime

Mining Accidents

The protection of the environment through
criminal law in Spain and Hungary.

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Mining activities are of utmost importance for the European Union. EU has approved in the last years different strategies in order to guarantee the mineral supplies that our industry requires.

The authorizations and permitting procedures that must be complied with by Operators as well as Administration in charge of them, is a matter of major concern.

**THIS CASE STUDY IS RELEVANT TO IMPLEMENT A
COHERENT FRAMEWORK FOR AN EFFECTIVE FIGHTING OF
ENVIRONMENTAL CRIME AT EU LEVEL**

Aznalcóllar 1998





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The Aznalcollar case shows the relevance of enforcement mechanisms for updating environmental legislation, the content of environmental authorizations and determination of an appropriate legislative framework to enforce liability for legal persons.

THE AZNALCOLLAR CASE

Kolontar 2010





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The Kolontar case shows that even though Hungary complied with the Environmental Liability Directive, the incorrect enforcement of the waste management Directive undermined the enforcement of the former and other directives.

THE KOLONTAR CASE

This case study contributes to open a debate on the criminal liability of Administrations and Law Enforcement Agencies

- ⊕ The violations of public institutions against the environment is one of the most worrying aspects of these crimes. Numerous instances of environmental aggressions are attributable, directly or indirectly, to the public authorities: the unwillingness to adopt and enforce regulation, the lack of evidence of the harmful effect of economic activities to which they have given a licence or the failure to update the administrative rules, the absence of monitoring the requirements associated with the granting of authorization, lack of inspections or silencing the discovery of breaches of law and permits and declining to prosecute by the law enforcement agencies.

- ⊕ **This case study contributes to open a debate on the criminal liability of Administrations and Law Enforcement Agencies**
- ⊕ Mining activities are a field that particularly exemplifies that the administrative dependence on criminal law may become a serious obstacle to prosecuting and sanctioning environmental crimes. Criminal law depends heavily on the administrative legislation, and in particular, on a diligent application by the administrative authorities. Lack of adequate controls, active toleration of infractions and malpractice by the administrative authorities have been a recurring problem at the origin of industrial accidents, and in particular, in mining accidents. The authorizations and permitting procedures that must be complied with by operators as well as administrations in charge of them have become a matter of major concern and their infringements cannot be just an administrative infraction but also an environmental crime. Legal gaps and loopholes in the mining laws have been exposed by accidents and catastrophes that triggered the adoption of new EU legal regimes in order to better regulate the management of mining waste and the restoration of sites as well as those aspects of the licensing procedures and liability legislation that required a special regime.

Methodology

- ⊕ Analysis of mining accidents (facts, legal framework, case law, resolutions and subsequent consequences) has been made from a criminal legal perspective and using the legal rules applicable, professional literature and related case law.

Data availability

- 🌐 Case law, literature and institutional reports provide data.
- 🌐 However, there are some **shadow reports** denouncing the veracity of some official reports. These reports will be examined as part of the literature
 - A Hungarian report denounced the Hungarian Government for:
 - 🌐 dismantling the Inspectorate services.
 - 🌐 Adapting the laws to the MAL company interest: changing the qualification of the type of waste.

This case study contribute to inform the concept of environmental crime

- ④ 3 aspects have been developed in our case study:
- ④ The role played by Administrations in the management of mining activities and especially facing catastrophic scenarios after mining accidents.
- ④ The application of a Liability Regime on Environmental Damage.
- ④ Identifying what motives and factors determined or excluded criminal responsibility in these cases.

This case study contributes to inform the concept of environmental crime

- ⊕ **Infringements of the licence conditions by the operator**, that depending on the seriousness of the breach it can be either an administrative offence or a crime, and gives rise to administrative, civil or criminal responsibility depending on the system chosen by the Member State.
- ⊕ **Failure of the Administration** to monitor the activities carried out under the licence and to update the standards of protection.
- ⊕ **The role of the Government :**
 - ⊕ The seriousness of the damage caused to the environment, the local population, the local and national economy.
 - ⊕ The difficulty of obtaining adequate compensation for the damage to the environment and population.
 - ⊕ The inadequacies, shortcomings and loopholes of the investigations and legal system. (Or sometimes like in the case of Hungary, the Government did the wright thing dealing with damage and victims with remarkable diligence.)
- ⊕ **Prosecutorial discretion of the European Commission**

This case study helps to understand the main motivation to commit an environmental crime

- ⊕ Some of the purposes served by the illegal behaviour of the operator just serve **to cut costs**.
- ⊕ This problem is global, a comparative study of cases can show that operators in the United States of America or in any other country will discharge waste water into a river, **if the public facilities cannot dispose of them and the private facilitates speculate with the prices or there is no facility**.
- ⊕ Corruption, Economic crime and Organised crime can also grow and profit from these conditions.

This case study helps to understand the motivation to commit an environmental crime?

- ⊕ Some of the purposes served by the illegal behaviour of the Administration are:
 - The general interest. It is considered that priority should be given to economic and production factors, including providing employment in areas where there is considerable unemployment rather than the environment and that this will benefit the entire society.
 - The particular interest may be obtaining a financial benefit by the public institution and the particular individual or company involved which may result in corruption. Environmental organized crime in Spain is mainly manifested in this way.

The enforcement procedures for discouraging environmental harmful conducts are not effective in this case study

- ☉ Most mining accidents have some aspects in common and share some legal **challenges for** the enforcement of environmental law and environmental criminal law.
- ☉ Both of them raise countless questions on the shortcomings and loopholes of the existing legislation at the moment of the catastrophe regarding:
 - Licences and authorisation procedures,
 - Remedial measures,
 - Financial guarantees and legal responsibility, both criminal and civil.
 - Inspectorate services.

The enforcement procedures for discouraging environmental harmful conducts are not effective in this case study or in similar cases

- ⊕ Those mining activities that are highly profitable may test the **capacity of deterrence of the low sanctions** and fines set out for violations of licences as well as those regulations on waste management.
- ⊕ Big companies can pay **to delay legal proceedings** and, sometimes when there are no injunctions available to prevent damage in advance, they seek to consolidate the criminal acts (e.g. open cast mining in a natural park).
- ⊕ In Spain, there is no plea bargaining, but companies can agree a compensatory agreement after accepting criminal **responsibility with reduced punishment**.

- ④ The mining accidents that have been examined in this case study have some aspects in common and share some legal challenges for the enforcement of EU environmental law and environmental criminal law, raising important questions on the shortcomings and loopholes of the existing national legislation at the moment of the catastrophe regarding: licences and authorisation procedures, mechanisms to monitor and to update environmental standards and requirements according to scientific knowledge, remedial measures, financial guarantees and legal liability, both criminal and civil.

Policy implications

- ④ The adoption of compulsory legislation on monitoring and inspectorate services at the European level is of the most importance to improve enforcement and increase efficiency of the administration and effectiveness of the **environmental law at national level.**
- ④ **Criminal liability of authorities as well as legal public entities must be foreseen in the Member States' legal systems in order to provide the required tools to combat environmental crime.**

Policy implications

- ⊕ In the case of hazardous activities, an Environmental Liability Directive Fund should be established in order to cover damage unable to be compensated by operator's resources and insurances as proposed by the Hungarian Government.
- ⊕ A better dialogue between the different EU legal instruments and their enforcement is necessary, in particular, between the Environmental Liability Directive and the Environmental Crime Directive.