

Communication concerning the decision of the Curia of Hungary  
in criminal case n° Bfv.III.574/2014

By its judgment having become final at first instance, the District Court acquitted the accused of the charge of having violated the waste management regulations. The acquittal was based on the finding that the conduct of the accused as specified in the bill of indictment – namely, the dumping of community liquid waste from his sludge tanker truck not on an area licensed for receiving waste but on a privately owned land parcel – did not constitute an offence, as under the Act on Waste Management, as in force at the time of adjudication, liquid waste no longer amounted to *waste*.

The County Public Prosecutor's Office filed a petition for judicial review against the final decision, seeking the quashing of the judgment and the remittal of the case to the first instance court.

According to the reasoning of the petition, the District Court erroneously concluded that cesspit sludge amounted to community liquid waste, that is waste water, and that under Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives and under section 1 subsection (2) item a) of Act no. CLXXXV of 2012 on Waste, as in force at the time of adjudication, it did not amount to waste.

According to the reasoning of the petition, the phrase "sludge from septic tanks" featuring under code number EWC 20304 in the Annex to Decree no. 72/2013 (VIII. 27.) of the minister of rural development giving the list of waste materials in force at the time of the submission of the petition was almost verbatim the same as the phrase „sludge from cesspits" in Annex no. 1 to Decree no. 16/2001 (VII. 18.) of the minister of environment and water resources, as in force at the time of the commission of the offence.

The County Public Prosecutor's Office was of the opinion that materials deposited without authorisation did, irrespective of their designation, amount to waste both under Act no. XLIII of 2000 on Waste Management and Act no. CLXXXV of 2012 on Waste.

According to the reasoning of the decision of the Curia, the legal interest sought to be protected by the criminal provision was the protection of the environment from the harmful effects of hazardous waste materials.

The criminal provision governing the offence of violation of waste management regulations is a framework provision whose constituent elements are to be found primarily in Act no. CLXXXV of 2012 on Waste and in the implementing decrees for that Act.

In the meantime, Directive no. 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste – with which the Act on Waste Management had been in full conformity – was repealed by Directive 2008/98/EC, whose Article 2(2) excluded wastewaters from the scope of the Directive where and inasmuch as such waters were covered by another piece of Community legislation. With a view to bringing domestic legislation in line with this Directive, Act no. CLXXXV of 2012 on Waste was adopted, whose section 1 subsection (2) provided that in case a piece of legislation transposing or implementing an EU legal instrument other than Directive 2008/98/EC contained a regulation different from the one contained in the Act on Waste, the Act on Waste would not be applicable to wastewaters.

According to the reasoning to section 102 of the Act on Waste, under the waste management regulations municipalities continued to be under the obligation of setting up a public service for the collection and transportation of residential wastewaters uncollected by public utilities. Directive 2008/98/EC provided that the waste regulation contained in the Directive should be incorporated into the water legislation, and in this context the Directive did not introduce any change in respect of the duty of setting up a public service.

Section 102 of the Act on Waste incorporated Chapter IX/A on public services to be set up for the collection of wastewaters uncollected by a public utility into Act no. LVII of 1995 on Water Management.

Under section 44/J subsection (1) of the Act on Water Management, where an activity related to residential wastewaters uncollected by a public utility is carried out by a real estate owner or a public service provider not in conformity with the law or the notification of such activity, a public service fine shall be imposed on the real estate owner or on the public service provider.

Under subsection (2) of the same Act, the public service fine shall be imposed by the water management authority.

For the foregoing reasons the Baja District Court, relying on Criminal Uniformity Decision no.1/1999, correctly concluded that due to the change in the administrative norms having constituted the content of the framework provision contained in section 281/A of the Criminal Code, the object of the offence was missing hence the conduct of the accused could not be deemed to have been in conformity with the provision governing the offence.

Therefore the District Court, correctly interpreting and applying the substantive provisions of criminal law, lawfully acquitted the accused of the charge brought against him.

Therefore the Curia rejected the petition for judicial review, and under section 426 subsection (1) of the Code of Criminal Procedure upheld the contested decision.

Budapest, the 24<sup>th</sup> of November 2014

Criminal Department of the Curia of Hungary