

Webinar for prosecutors and judges:
EU WASTE LEGISLATION AND PROTECTION OF THE
ENVIRONMENT THROUGH CRIMINAL LAW
Focus on combating waste crime

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Webinar

Case Study: "fordítás ferdítés"



The first slide shows the topic.

The „case behind the case“ is ...

C-487/14 -Total Waste Recycling

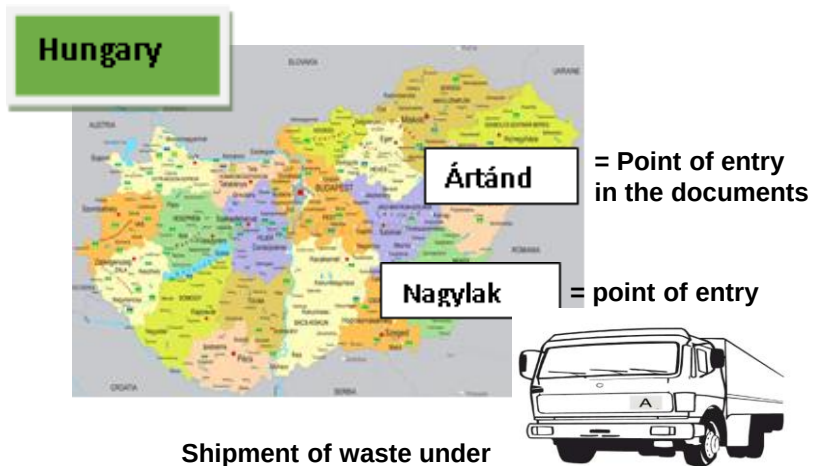
Reference for a preliminary ruling
by a Budapest Court

You may look it up at: www.curia.eu



It is important for the audience to have a “real case” (C-487/14) behind the fictitious case which makes things more authentic.

The facts are crystal clear ...



Shipment of waste under
the „amber“ list within the EU



Copyright: amazon.com

This slide provides an eye catcher. It makes clear that this case is not at all about unclear facts.

Is there a legal basis for the fine (25.000 €)?
Is there an offence under Hungarian/EU law?

Starting point is Hungarian law ...

Judge Kertész explained:

Under Hungarian law it is an offence

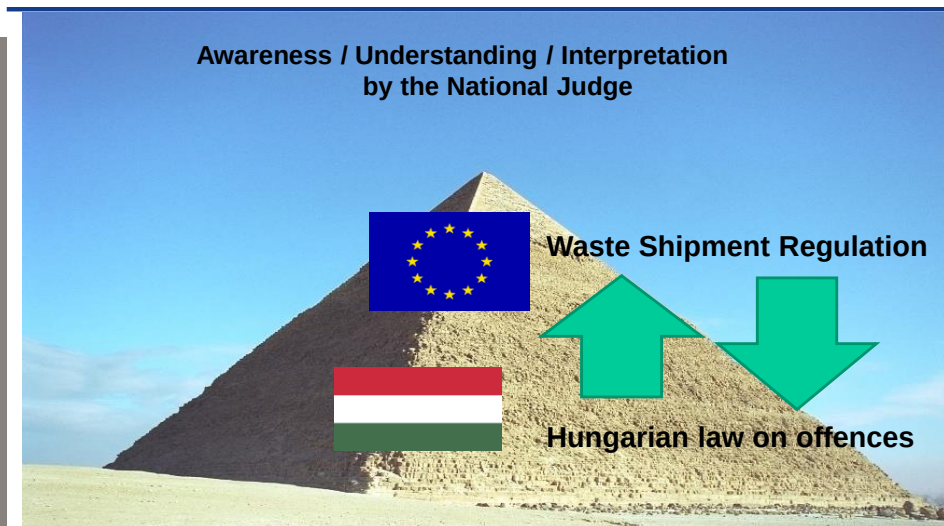
if a natural or **legal person** (=Kft=Ltd.) conducts an “**illegal waste shipment**”.

When it comes to the meaning of “illegal waste shipment”
the national law makes **a reference to EU waste law**.



This slide tries to reflect the take of a national judge when hearing cases on criminal sanctions involving EU law. An interplay between domestic law and EU law occurs.

Multi level system ... from the perspective of the national judge



The interplay between domestic law and EU law is visualized here.

Article 2 (35) (d) of Regulation No 1013/2006

Article 2 of that regulation, entitled 'Definitions', provides:

(35) **"illegal shipment"** means any shipment of waste effected:

(d) **in a way** which is not specified materially in the notification or movement documents; ...'

"in a way that ..."

is it really **only „means of transport"** („mód"/ „módon")
like lawyer Prof. Nagy contends ?



What constitutes an "illegal shipment" has to be determined by applying Regulation 1013/2006.

“in a way that …” What does it mean?

Judge Kertész asked the Court of Justice (C-487/14) for guidance .

The Court of Justice according to its function under Art. 19 (1) TEU had to do an interpretation exercise in order to find the true meaning of „in a way“.

The court conducted a

literal, contextual and teleological analysis

and took not only the Hungarian version of the provision but all other languages into account.



The slide mentions the method of a state-of-the-art interpretation of legal provisions and the fact that all language versions matter.

Literal analysis (II) :

“in a way that ...”

effectué d'une manière qui ...

по начин, който ...

με τρόπο που ...

in einer Weise erfolgt, die

die (Dutch)



The slide makes visible some of the different language versions.

Literal approach:

“in a way that ...”

på en måde

într-un mod ...

in un modo che ...

De um modo ...

Footnote:

Hmm ...

Hungarian “mód or módon” ...

seems like Latin “modus” to me ...



Some more language versions are mentioned.

Contextual analysis:

Reading Article 2 (35) (d) in conjunction with
Article 17 of Regulation No 1013/2006 ...

Changes in the shipment after consent (Article 17)

1. If any **essential change** is made to the details and/or conditions of the consented shipment, **including changes in the** intended quantity, **route, routing**, date of shipment or carrier, the notifier shall inform the competent authorities concerned and the consignee immediately and, where possible, before the shipment starts.
2. In such cases a **new notification** shall be submitted, unless all the competent authorities concerned consider that the proposed changes do not require a new notification.



Article 17 is a good basis for a contextual analysis. It makes clear that a permit does not “cover” to change the route or routing of the waste shipment.

Contextual analysis reveals the meaning ...

Under Article 17 changes in route and routing
(Nagylak instead of Ártánd as point of entry)
qualify as an essential change that
needs a new notification.

Shipment of waste without a (new) notification is illegal.
An existing notification and consent does not cover
another point of entry.



The result of the contextual analysis is shown.

Teleological analysis:
The „ratio legis“ of Regulation No 1013/2006
confirms our understanding

Recital 7 of the preamble states
that it is important to organise and regulate

the supervision and control of shipments of waste

in a way which takes account of the need to preserve, protect and
improve the quality of the environment and human health.

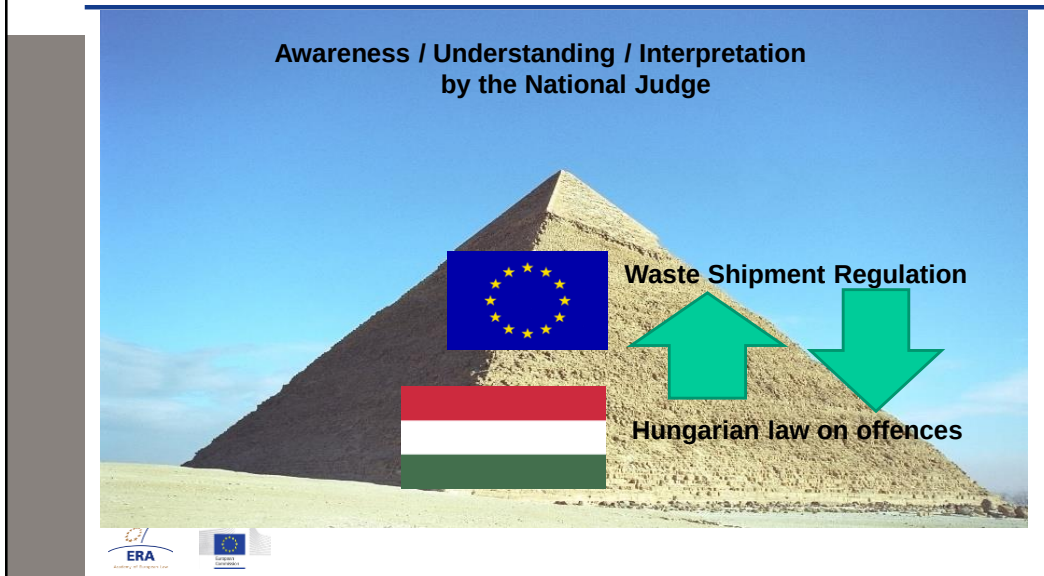
[“German saying: Vertrauen (= “trust”) ist gut, Kontrolle ist besser.”]

**So, case closed,
because there is a clear illegal shipment of waste ?**



The result of the teleological analysis is described.

However, we have not yet solved
the "fordítás fordítás" problem!
What if the Hungarian translation distorted the real meaning...



This slide goes back to the national (Hungarian) level where the different language versions of EU law have to be applied as an integral part of the law of sanctions.

If the Hungarian version („mód/módon“)
cannot be read otherwise than „mode of transport“ which I doubt
and only Judge Kertesz from Budapest can assess properly,
well then, we have a



Under the given scenario a “nulla poena sine lege” problem could arise.

Let us finish by discussing „nulla poena sine lege“:
Hypothesis: „Clear“ national law on crimes and offences
incorporates - *horribile dictu* - „unclear“ EU law.

In Europe it goes without saying that “no punishment shall be carried out unless done so in accordance with a law that is **“certain and unambiguous”**”.



Paris 2010- Le penseur CC BY-SA 2.0 Credit:
Daniel Stockman-Flickr: Paris 2010 Day 3-9



A law on (criminal) sanctions must be “certain and unambiguous”.



If you as a prosecutor / criminal judge

... come to a point where you think that existing EU law is not clear and unambiguous enough ...

... to build a criminal case on it, especially when it comes to the language version you are working with ...

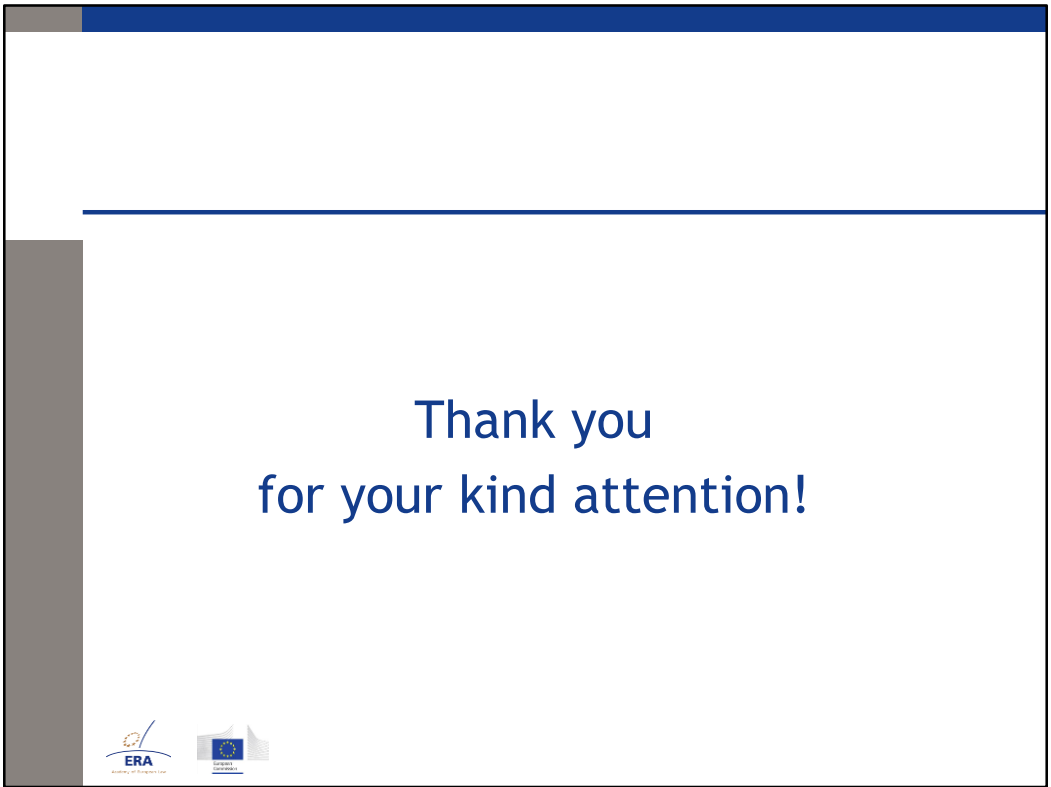
well then, **be aware of the fundamental European interest involved and ask the Court of Justice for a preliminary ruling.**

Only after that, you should draw your legal conclusions on the national level of criminal law.

„Hotline“ to the CJEU: “Recommendations to national courts and tribunals, in relation to the initiation of preliminary ruling proceedings from 20 July 2018, cf. Official Journal 2018/C 257/01 and Website of the CJEU.



Again: A request for a preliminary ruling is proposed as a solution to clarify the legal situation.



The slide speaks for itself.