Cause for Cautious Celebration: Hungarian Post-Communist Environmental Reform

Karen S. Libertiny
University of Michigan Law School

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CAUSE FOR CAUTIOUS CELEBRATION:
HUNGARIAN POST-COMMUNIST ENVIRONMENTAL REFORM

Karen S. Libertiny*

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The accurate recounting of governmental, scientific, and academic opinions in both Hungary and the United States was made possible by a fellowship grant from the Population Environmental Dynamics Program of the University of Michigan in conjunction with the MacArthur Foundation, which funded a five-week research project in Hungary and Washington D.C. from July 26 to August 30, 1992. The significant contributions of information, time, patience, and effort on the parts of those officials, attorneys, scientists, and scholars who were interviewed in both Hungary and the United States are greatly appreciated.
INTRODUCTION

In October 1989, the Hungarian Communist regime collapsed and was replaced by a democratic government. This new government was confronted with a visible and grave concern: environmental degradation. In just three years, the new Hungarian government, sometimes of its own impetus, sometimes at the prodding of environmentalists and foreign governments, has taken tremendous steps toward establishing palpable environmental legislation. More importantly, it has created an adminis-

1. Many valuable commentaries address the wider issue of post-communist environmental protection efforts in Eastern Europe; in contrast, this Note concentrates solely on Hungarian legislation, and legislation concerning groundwater pollution in particular. There are three reasons for this limited choice. First, concentrating on one nation's approach to a single source of pollution allows time and space for the magnified examination of the complicated reasons for the current bottleneck of legislative efforts which has developed throughout most Eastern European countries. Second, Hungary was specifically chosen as the site of the research efforts because it has been recognized by both the World Bank and the United States Environmental Protection Agency as the Eastern European country with the greatest potential for improvement. Interview with Stephen Wassersug, Program Manager of the Regional Environmental Center for Central and Eastern Europe, in Budapest, Hungary (Aug. 13, 1992). Such strong potential is primarily due to its less severe environmental degradation, its relatively consistent policy of thorough statistical research, and its large number of highly trained and eager engineers, legal scholars and activists. Id. Last, water pollution in particular was chosen as the focus of research because of the greater number and quality of available statistics, regulations, and studies.

This Note is a partial sequel to Margaret Bowman & David Hunter, Environmental Reforms in Post-Communist Central Europe: From High Hopes to Hard Reality, 13 MICH. J. INT'L. L. 921 (1992). It is a sequel in that it picks up where the Article's brief section on Hungary leaves off, using the same foci of analysis as the Article. This Note, however, focuses exclusively on Hungary, rather than all Central European countries, and as such, enjoys the luxury of delving much deeper into the legal, historical, and political setting of the country's struggle for improvement of the environment.

It should be clear, however, that this Note reaches a different conclusion about the rate of Hungary's progress toward environmental protection. The Bowman and Hunter article remains critical of what it deems sluggish progress by the Hungarian Parliament. This Note is cautiously pleased with what it views as remarkable progress.

2. See the following interviews: Interview with Margaret Bowman, Director of the Environmental Program for Central and Eastern Europe, Environmental Law Institute, in Washington, D.C. (Aug. 26, 1992); Interview with Dr. András Homonnay, Managing Director of ENVIMARK, Hydro-Environmental Marketing and Informatics Ltd., in Budapest, Hungary (Aug. 13, 1992); Interview with David Hunter, Staff Attorney, Center for International Environmental Law (CIEL) - United States, in Washington D.C. (Aug. 25, 1992); Interview with Sándor Kisgyörgy, Director, Department for Water Quality, Hungarian Ministry of Environment and Regional Policy, in Budapest, Hungary (Aug. 13, 1992); Interview with Dr. Peter Literathy, Director of Institute for Water Pollution Control, VITUKI, Water Resources Research Center, in Budapest, Hungary (Aug. 13, 1992); Interview with Stephen Wassersug, Program Manager, Regional Environmental Center for Central and Eastern Europe, in Budapest, Hungary (Aug. 6, 1992); Telephone interview with Robert Wilkinson, Director, Graduate Program in Environmental Sciences, Central European University in Budapest, Hungary (Aug. 17, 1992). Transcripts of these interviews are on file with the Michigan Journal of International Law.

3. See infra Part IV for a detailed discussion.
trative and information-gathering infrastructure capable of sustaining a cohesive system of environmental protection initiatives. Although the path to further progress is littered with obstacles, this East European country has proven itself a worthy warrior in the fight against environmental deterioration.

I. THE RISING TIDE OF WATER POLLUTION

As a first step in curbing environmental abuses, the Hungarian government commenced an evaluation of the damages that arose from years of toxic dumping in the nation's water sources. The Hungarian government conducted a comprehensive evaluation, but also permitted the independent research of non-governmental organizations and scholars. The government deserves commendation for its part in instigating such an open evaluation.

A. Swift Disclosure: Hungary's Admitted Disaster

Although Hungarian environmental reform has yet to reduce actual pollution levels, the Hungarian government nevertheless deserves praise for its efforts. Hungarian environmental protection efforts should be admired, first for the rapid disclosure of incriminating statistics, and second, for bold legislative initiatives.

Under the Communist dictatorship, the Hungarian government consistently ignored alarming pollution levels. The environment had been deteriorating at a frightful rate. Unfortunately, the Communist government never disclosed the state of the environment to the public. Tunnels now so polluted that they are impassable to pedestrians, once majestic views now clouded in exhaust fumes, and increasingly younger inhabitants suffering from lung and heart ailments are just some of the emerging signs of a country in environmental decay. When the Communist government in Hungary fell, the new democracy released the long hidden statistics documenting the obvious degradation of Hungary's natural resources. The evidence of environmental degradation came fast

4. Id.
5. See infra Part IV.
8. Id. at 96.
and furious, both from scientists and the government itself.

In its first official environmental assessment, the government-funded Institute for Environmental Management published its “1989 State of Environment in Hungary & Environmental Policy” on behalf of the Hungarian Parliament. The results were strikingly blunt. The report began with the following summary:

*Our soils, surface and underground waters are contaminated as a consequence of the inadequate solution of the treatment and disposal of the wastes produced, the industrial and communal sewages, [and] sewage muds as well as the inadequately applied fertilizers... The quantity of wastes produced in the period 1962–86 increased by 24%... Dumping the settlement wastes presents a problem, primarily because the capacity of the dumping sites seems to be exhausted. There is no improvement in the field of separated collection due to economic reasons and way of thinking, and also to the lack of adequate technological conditions...*

This comprehensive report also provided a categorical evaluation of the political, economic and social sources of Hungary’s environmental woes. Without blaming the Communist system for the country’s environmental decay, the report stressed that the strong push for an economy dominated by heavy industry was a causal factor. It further identified the switch to collectivized farming techniques as a disastrous plan. The report stated:

*The forced pace of development of energetics, coal mining, metallurgy and heavy industry neglected the viewpoints of environmental protection and gave rise to significant detrimental effects. Small-scale farming, which is in good harmony with nature, was replaced by the more productive large-scale agricultural units which are difficult to harmonize with nature, and therefore cause additional harms to the environment.*

In a further stab at the excesses of the unnamed, but obvious, political predecessor, the report added: “The development of infrastructure started to lag behind, and, in addition to the production processes requiring incredibly high level[s] of raw-material and energy utilization, consumption became wasteful and pollutant.”

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10. Id. at 12, 17 (emphasis added).
11. Id. at 7.
12. Id. (emphasis added).
13. Id.
The report demonstrates that even the new, economically pressed government realized the urgency of the water contamination problem and was prepared to respond.\textsuperscript{14} For example, Sándor Kisgyörgy, the Department Head for Water Quality in the Hungarian Ministry of Environment and Regional Policy, agrees that the levels of water contamination in Hungary’s water sources require immediate attention.\textsuperscript{15} Passing smoothly over the threshold issue of whether the Parliament recognizes the immediate severity of Hungarian water pollution, Kisgyörgy quickly turns the issue toward questions of how to approach the problem.\textsuperscript{16} He does not ignore the suggestions of environmental and legal scholars, but he does not know how to implement them. In the past year, Kisgyörgy elaborates, members of Parliament voiced over 500 suggestions, comments, and criticisms concerning the relationship between the private property system currently being designed and environmental reform.\textsuperscript{17} The sheer magnitude of these responses proved unwieldy and indigestible. As a result, the government choked on its response. Yet, in light of its admissions, official environmental status reports and Parliamentary debates, the Hungarian government has at least rolled the proverbial ball to the top of the hill.

Despite the government’s effort, educated observers have remained critical. Independent Hungarian and American scholars, environmental organizations such as the Danube Circle, and even the Regional Environmental Center for Central & Eastern Europe are unsatisfied. These

\textsuperscript{14} Several respected scholars argue that Hungary should not be congratulated for speedy acknowledgment of its environmental problems because Parliament required one and a half years to decide that it would construct any environmental law at all. This Note seeks to advance the opposite argument; that in light of Hungary’s political, economic, judicial, and administrative structure following the establishment of the new democracy, the time taken to come to grips with the country’s environmental dilemma has been extremely reasonable. See Margaret Bowman & David Hunter, \textit{Environmental Reforms in Post-Communist Central Europe: From High Hopes to Hard Reality}, 13 MICH. J. INT’L L. 921 (1992).

\textsuperscript{15} See Kisgyörgy, \textit{supra} note 2.

\textsuperscript{16} András Homonnay, an attorney from the quasi-governmental VITUKI Water Resources Institute, comments that the Hungarian Parliament has often been criticized for turning most efforts for water pollution reform into a political maneuver. Homonnay, \textit{supra} note 2.

\textsuperscript{17} The shift from the previous communist government to the new democracy created the issue of how to distribute the previously state-owned, industrial and real property to the Hungarian people. The new government faces substantial difficulty in determining how to allocate such property among prior owners with conflicting, dated, or absent ownership papers. More importantly, the new Democracy faces a similar problem with distributing shares in Hungarian corporations previously owned and operated by the government. This public distribution of corporate shares is of utmost importance to environmental legislation policy, because it will determine the placement of liability for past and present industrial water pollution. See Carol Williams, \textit{Hungary to Hold First Free Election in 40 Years Today}, LOS ANGELES TIMES, Mar. 25, 1990, at A1, A14.
Hungarian Environment Reform

groups cite the one and a half year delay by the Hungarian government before it would admit the existence of a severe environmental problem requiring quick attention.

In the face of such criticism, however, the Hungarian Parliament should be cautiously congratulated for its relatively speedy acknowledgment and subsequent measurement of the extent of Hungarian environmental damage. Such praise should come in light of the considerably greater time taken by the American government in assessing its own environmental problems. Yet, praise should be guarded; the road does not end here, and often the Parliament has moved forward only at the prodding of its critics. It is the Parliament’s critics who deserve much of the praise.

A review of American environmental reform initiatives, beginning in the 1950s, proves that Hungary has much of which it can be proud. For example, California, one of the first American states to be confronted with a tangible pollution concern in the form of smog, took over six years to admit that vehicle exhaust was a primary culprit, and over ten years to produce any significant form of environmentally protective legislation. When compared with the decade during which the California legislature avoided addressing its own environmental degradation, the Hungarian Ministry's efforts of the past two years are at least above excessive reproach.

B. Subsequent Surveys: A Flood of Statistics

Not only did Hungary's new democratic government seek to evaluate its country’s environmental danger, it allowed scholars and scientists the

18. JAMES E. KRIER & EDMUND URSIN, POLLUTION AND POLICY: A CASE ESSAY ON CALIFORNIA AND FEDERAL EXPERIENCE WITH MOTOR VEHICLE AIR POLLUTION 1940–1975, at 259 (1977). Although Hungary admittedly possesses the technology necessary to understand the causal connection between auto admissions and rising pollution levels, technology yet unknown to the United States in the 1950s, Hungary’s political and industrial preoccupation with Communism left such technology largely untouched for over three decades. As seen from the benign activities of the early Hungarian “monitoring agencies,” Hungary in 1989 was arguably at a technological level comparable to the United States of the 1950s.

19. Two factors should be noted in order to avoid undue praise. First, the speed with which the new Democratic government began assessing its environmental pollution is undoubtedly due to the fact that the previous Communist government could both conveniently and rightfully be blamed for the dismal state of affairs. Second, although the Hungarian government should be commended for publishing STATE OF THE ENVIRONMENT IN HUNGARY, supra note 9, it should not be congratulated for its efforts to disseminate this information to the public. Only approximately 100 copies were published, and most of those copies were distributed to government officials and researchers. Literality, supra note 2.
opportunity to develop independent studies. The results of these studies were grim, but as a result, the new Hungarian government has shed the vestiges of Communist rule by refusing to suppress such information.

The non-governmental and quasi-governmental studies which cropped up after 1989 were uniformly critical.20 The reports confirmed that water flowing in from abroad was already significantly polluted with sewage and waste waters replete with detergents, cyanide, ether, chromium, sulfuric acid, sulfide, lead and liquid manure.21 In passing through Hungary, the water became heavily contaminated with arsenic, insecticides, chlorine, factory sewage and infectious diseases.22 These private studies also recorded alarmingly high nitrate levels which were linked to increased intestinal and stomach cancer in Hungarians who drank the contaminated water.23 The Technical Department of the World Bank Environmental Division followed close on the heels of the Hungarian government in assessing the damage. It contributed newly acquired statistics in its November 1990 evaluation of Hungarian pollution levels. It was as blunt as the Hungarian government’s State of the Environment report, but included far greater depth and magnitude. For example, the World Bank reported: “In practice, the majority of groundwater used for domestic or municipal purposes is distributed to consumers virtually without any form of treatment except in some cases disinfection. . . .”24

The World Bank also strongly criticized both existing and earlier efforts by the Hungarian government to improve the quality of Hungary’s drinking and bathing water.25 In characterizing the Hungarian government’s approach to increased water pollution, the World Bank explained: “When water falls below a certain quality, the usual response is to


21. ENVIRONMENTAL DIVISION, WORLD BANK, supra note 7, at 38. This report indicates that 94% of surface water in Hungary flows in from neighboring countries and is already polluted upon its arrival.

22. Hock & Sómyódy, supra note 20, at 77; ENVIRONMENTAL DIVISION, WORLD BANK, supra note 7, at 37–38.

23. Studies have indicated that in Borsód and Szabolcs-Szatmar counties, there have been higher rates of cancer of the stomach and digestive tract where the local drinking water was contaminated with high nitrate levels. ENVIRONMENTAL DIVISION, WORLD BANK, supra note 7, at 37. Regarding arsenic pollution, the Hungarian National Institute of Hygiene (OKI) reported that 450,000 residents of six Hungarian counties were drinking water loaded with two to three times the acceptable standard of arsenic. Such contamination often leads to high infant mortality due to spontaneous abortions, low birth weight, and increased risk of heart disease. Id.

24. Id. at 79.

25. Id.
terminate the supply. During the 1980s, the amount of public water supply capacity which had to be shut down due to quality decrease to Class III was 150 cubic meters per day.\(^{26}\) In addition, the World Bank reported that any prospects for improvements in overall Hungarian water quality were similarly grim. Over a third of all public water sources were expected to become contaminated with chemical, sewage, and bacterial pollution before the year 2000.\(^{27}\) This prediction is particularly disturbing when the World Bank determined that more than half of the current potable water supply in Hungary is not adequately protected from these dangers.\(^{28}\)

In short, critical information provided by both governmental and non-governmental sources reveal the same grave situation which the Hungarian Parliament now clearly recognizes. This first step of recognition should be acknowledged as a significant achievement for a country which had not dared to open its eyes for several decades. Of even greater importance, however, is the Hungarian Parliament’s subsequent commissioning of two draft proposals for environmental protection. The mere existence and considerable content of both drafts are noteworthy achievements.

II. THE POLITICAL AND ECONOMIC HISTORY OF THE STATUS QUO

Before proceeding to the analysis of the two Hungarian reform initiatives currently being considered by the Hungarian Parliament, it is necessary to briefly outline, first, the current Hungarian political and economic climate, and second, the current legal and administrative structure. This information proves useful in illustrating the setting for the current Parliamentary debate. It thus proves essential to evaluating both

\(^{26}\) Id. There are three levels of water quality in Hungary: Class I, Class II, and Class III. Of these, Class I signifies that the water is “suitable for use in the municipal water supply.” Class II designates water which is “suitable for animal, agricultural and recreational use.” Id. at 38. Class III is water deemed “suitable for industrial use.” The World Bank views these categories as follows: first class water is water which can meet the quality of various water uses by simple technological treatment. Second class water needs more complex treatment before it can be used for most purposes. Third class water hardly meets the quality criteria, even after sophisticated treatment, and is “sufficiently polluted to jeopardize aquatic life.” Id.

\(^{27}\) Id. at 79.

\(^{28}\) Specifically, the World Bank reported, “Of 1,200 public water supplies, more than 400 are expected to become contaminated during the next decade. Out of the presently utilized 4,780,000 cubic meters of potable water, only 48% is adequately protected from pollution. 52% is not adequately protected, including the 1,280,000 cubic meters per day for Budapest. Some quality degradation has been registered in 34% of the water supply since construction of respective water works.” Id. at 79–80.
the theoretical and the procedural difficulties in implementing each draft. Most importantly, such information helps to highlight the amazing comprehensiveness of the two drafts against the unpracticed background of a newborn democratic Parliament. It is because of this depth that the Hungarian Parliament and its determined lobbyists should take credit for the two significant pieces of legislation.

A. The Political Climate: A Multi-Party State

Hungary's silent revolution of 1989 overturned the Communist dictatorship lead by Imre Pozsgay and ushered in eager hopes for democratic, capitalist change as well as considerable optimism among environmentalists that water, air and land pollution issues soon would be addressed.29 The publication of the 1989 "State of the Environment in Hungary" report, and the subsequent funding, encouragement and acceptance of private surveys and evaluations of environmental ailments were hailed by environmentalists as the first steady steps toward curbing pollution. In a year when the Hungarian Communist Party removed itself from power, when a newly formed democratic Parliament renamed the country the Republic of Hungary,30 when that Parliament adopted a new democratic constitution, and called for a referendum to elect a new active president for the first time in forty-two years, anything and everything seemed possible.31

The Preamble to the new post-Stalinist Constitution proudly stated: "The Republic of Hungary is an independent, democratic legal state in which the values of bourgeois democracy and democratic socialism prevail in equal measures . . . . All power belongs to the people, which


31. See supra note 30.
they exercise directly and through the elected representatives of the popular sovereignty." Of this Preamble and the more than 94 modifications to the Stalinist Constitution, far and away the two most important changes concerning environmental reform were the following: First, a newfound freedom to create political parties was established in place of the Communist Party's dictatorship, which had dominated the government for thirty-three years. Second, the new position of President of the Republic was created concurrently with the abolishment of the twenty-one member, politically impotent presidential council and its ceremonial head, Bruno Straub. Each of these two developments was of paramount importance to environmental reform. The first created the opportunity to form environmental parties. The second established a politically powerful president who could name a state of environmental emergency, or at least force the Parliament to address such issues.

Despite the quick formation of at least eight new political parties ranging from capitalist to socialist, and from grass roots parties to more formalized and powerful parties, environmental issues were often pushed to the back. The Hungarian Green Party attempted to win seats in the Parliament, but it gained less than one percent of the votes and had to repay state subsidies provided for its campaign.

The obvious reason for this evasion of environmental issues was the mainstream parties' preoccupation with the country's economic stagnation. Although the smaller parties focused on specific issues, environmental topics were generally excluded. For example, one of the smaller

32. A MAGYAR KöZTÁRSASÁG ALKOTMANYA [Constitution] pmbl. (Hung.).


34. The eight new mainstream parties which emerged in October, 1989 are as follows, in order of their respective number of members: the Hungarian Democratic Forum, with a membership of 20,000; the Independent Smallholders Party, with a membership of 20,000; the Social Democrats, with 9,000 to 10,000 members, the rurally based group called the People's Party, with 7,000 members; the Free Democrats and the Young Democrats with 3,000 to 4,000 votes each; the Christian Democratic People's Party with 1,500 members, and, lastly, the nationalist Bajcsy-Zsilinszki Society, with 500 members. Henry Kamm, Communists and Foes Back a Multiparty Hungary, N.Y. TIMES, Sept. 20, 1989, at A14.

35. The World Bank Report suggests that the Hungarian Green Party will remain an amateur organization for the near future. ENVIRONMENTAL DIVISION, WORLD BANK, supra note 7, at 21.

36. This may be the reason for the current increase in the number of localized but, tiny grass roots organizations. See Wassersug, supra note 1. According to Stephen Wassersug, Program Manager of the Regional Environmental Center for Central & Eastern Europe, located in Budapest, these Nongovernmental Organizations (NGO's) have become very strong and committed since their first appearance three years ago. Id. Examples of such groups are the Duna Kor, or the Danube Circle, the Friends of the Earth, and the Blue Danube movement, although the Regional Environmental Center has lists of thousands of committed grassroots movements in Hungary. Id. See also ENVIRONMENTAL DIVISION,
parties, the Independent Smallholders party, focused on agrarian reform in conjunction with the issue of the distribution of private property based on 1947 ownership records, but did not significantly address environmental protection reforms.\(^37\)

Although environmental issues were not at the forefront of election concerns, they were occasionally addressed. The new Hungarian government’s 1990 “Program for Transition and Development of the Hungarian Economy,” for example, devoted an entire chapter to environmental protection requirements.\(^38\) Although mostly theoretical in its goals and plans, it was a solid step forward. Hungarian scholar Gyula Bándi recounts that the Ministry of the Environment consequently fashioned a relatively meticulous plan of action which included such reform as the implementation of environmental impact assessments (EIAs) and specific nature conservation efforts.\(^39\) Yet, despite this attention to the environment, the first concern for all political interest groups revolved around the stagnant Hungarian economy.\(^40\)

**B. The Economic Climate: Worries Abound**

Hungary’s poor economic health in comparison to Western Europe was and is universally identified as the main reason for the lack of focus on environmental issues. The low Gross National Product figure, the decreasing annual growth rate, and the limited prospects for economic improvement all reflect Hungary’s economic woes. The desperate state of the economy currently consumes most of the Hungarian government’s time and efforts. This prevents Hungary from fully addressing its environmental problems.

Hungary’s Gross National Product, in the first available measurement

\(^{37}\) The Independent Smallholders Party has been criticized for advocating the distribution of land and assets based on these antique records because many of the title holders have moved to the city, died, or otherwise made their titles obsolete. Yet, many Hungarians living in rural areas of the country seek to return to their agrarian lives which were disrupted during the Collectivization Period. See Carol Williams, *Hungary to Hold First Free Election in 40 Years Today*, Los Angeles Times, Mar. 25, 1990, at A1.


\(^{39}\) *Id.*

\(^{40}\) There were other aspects of the new Hungarian Democracy which were expected to influence environmental protectionism, including greater international commitments like the 1991 Convention on Transboundary Impact Assessment. See *id.* at 6-7. See also Convention on Long Range Transboundary Air Pollution, *opened for signature* Nov. 13, 1979, 34 U.S.T. 3043, U.N. Doc. E/ECE (XXXIV)/L-18 (Hungary became a signatory Nov. 13, 1979).
since the Communist takeover, is the equivalent of approximately 30 billion American dollars in 1989.\textsuperscript{41} At first glance, this seems reasonable for a country which has slowly been introduced to a market economy. Nevertheless, a comparison with the former country of West Germany, an example of a much stronger and healthier economy, shows the darker side of Hungary’s situation. The former Federal Republic of Germany, with a population six times greater than Hungary’s, enjoyed a GNP forty times greater than Hungary’s.\textsuperscript{42}

Another indicator of Hungary’s slowdown in production was the change in its annual growth rate. From 1965 to 1980, Hungary’s annual growth was 5.6%, undoubtedly due to the massive construction of heavy industry in a previously agrarian country. From 1980 to 1989, however, the rate dropped dramatically to 1.6%.\textsuperscript{43} This meant that the growth in per capita GDP dropped from 5.3% to 1.8%. This left the average Hungarian with a meager $2,642 annual salary, as compared to the (West) German average of $19,179.\textsuperscript{44}

In addition to Hungary’s poor status quo, the prospects for improvement seem limited. Vital farmlands have been overused, and Hungary’s industry remains wasteful and underproductive.\textsuperscript{45} The country is also in the midst of a debt crisis. Attempts to remedy the debt crisis through recovery programs have failed.\textsuperscript{46} Total external debt in 1989, for example, was calculated at approximately US $2.6 billion, a strikingly high figure compared to the GNP.\textsuperscript{47} The World Bank reports that approximately 45% of Hungary’s export profits are used to cover the country’s interest payments and amortization on this national debt.\textsuperscript{48}

The worrisome state of the Hungarian economy has thus forced mainstream political parties to focus on economic development. Even environmental scholars are quick to identify the “economic factor” as the

\textsuperscript{41} WORLD BANK, WORLD DEVELOPMENT REPORT 209, tbl. 3 (1991) (Structure of Production). These are current figures, not adjusted for inflation.

\textsuperscript{42} Hungary’s 1989 GNP in U.S. dollars was just over $29 billion, while Germany’s 1989 GNP amounted to almost $1.2 trillion. Id. at 255, tbl. 26 (Population Growth and Projections).

\textsuperscript{43} Id. at 207, tbl. 2 (Growth of Production).

\textsuperscript{44} Id.

\textsuperscript{45} WORLD BANK, WORLD DEVELOPMENT REPORT, supra note 41, at 60-61; Hock & Sómyédy, supra note 20, at 73.

\textsuperscript{46} WORLD BANK, WORLD DEVELOPMENT REPORT, supra note 41, at 1.

\textsuperscript{47} The gross national debt per unit GDP ratio is 74%. WORLD BANK, WORLD DEVELOPMENT REPORT, supra note 41, at 250.

\textsuperscript{48} Id.
clear primary interest of the parties, and rightly so, most will add.\textsuperscript{49} András Homonnay, Managing Director of ENVIMARK, an environmental marketing firm, and the lawyer named by Sándor Kisgyörgy of the Ministry of Environment and Regional Policy to write the next Parliamentary draft of a Hungarian environmental law, explained that all of Hungary’s environmental responsibilities could be calculated into a price tag.\textsuperscript{50} For example, he states: “We cannot adopt immediately all of [our environmental] responsibilities. If we sign the European Carta about emissions, then we have to turn all our vehicles into [those using] unleaded gasoline. So it is at the present impossible.”\textsuperscript{51} Kisgyörgy similarly says: “The affectivity of [the new] law[s] will depend on economic incentives. It will cause an inflation effect . . .”\textsuperscript{52} Economics, then, or rather the fear of further economic difficulties, fueled the 1989 Hungarian political debates on the eve of the new multi-party democracy. This economic preoccupation continues.

However, despite Hungary’s existing economic decline and predictions of future decreased production, some of Hungary’s leading environmental lawyers do not see the country’s economic situation as cause for total despair. Gyula Bándi, past Secretary General of the Hungarian Lawyers’ Association, has been quick to point out the advantages of Hungary’s new economic status as a fledgling capitalist country. For example, Hungary’s foreign trade relations will significantly influence its development path as a capitalist country.\textsuperscript{53} First, EEC environmental protection mandates will require compliance if Hungary is to continue trade relations with Western Europe.\textsuperscript{54} Second, Bándi adds, foreign trade helps establish Western interests in Hungary which bring with them advanced technology and investment. He states that “[t]he development of foreign trade and the involvement of foreign capital and technology provide a better chance for the financing and use of cleaner technologies.”\textsuperscript{55}

\textsuperscript{49} Homonnay, \textit{supra} note 2.

\textsuperscript{50} Sándor Kisgyörgy, Department Head of the Ministry of Environment and Regional Policy, as well as Dr. Peter Literathy of VITUKI, the Water Resources Research Centre, Institute for Water Pollution Control, both named Homonnay as the potential draftsman of an updated version of an environmental protection act. \textit{See infra} part IV.B. for discussion of current pending legislation.

\textsuperscript{51} Homonnay, \textit{supra} note 2.

\textsuperscript{52} Kisgyörgy, \textit{supra} note 2.

\textsuperscript{53} \textit{See} Bándi, \textit{supra} note 38.

\textsuperscript{54} \textit{See} \textit{ENVIRONMENTAL LAW INSTITUTE, EUROPEAN COMMUNITY DESKBOOK} (1991) (an overview of the substantial body of EEC environmental law, including all significant directives, regulations and policies).

\textsuperscript{55} Bándi, \textit{supra} note 38, at 3.
Despite the prospects of increased Western investment and technology, scholars like Bándi also acknowledge the accompanying drawbacks. First, since economic incentives for environmental protection are not interwoven into the limited Hungarian laws on foreign investment, there is an increased likelihood that foreign investors will invade Hungary with those proposals that were rejected in their home countries because they did not meet EEC standards. Second, although a capitalist economy provides greater market strength than its Communist counterpart, most economists agree that a market economy often harms the environment when unaccompanied by legislation which mandates accounting for the social costs of environmental damage; this is the so-called tragedy of the commons.

Economic developments in Hungary, then, are mixed. Downward trends and diminished resources sound a warning bell. The new Hungarian market system has the potential to attract needed technology and environmentally clean industry. Yet such investment harbors the capacity to further pollute the environment unless Hungary enacts preventative legislation.

III. THE CURRENT JUDICIAL AND ADMINISTRATIVE STRUCTURE

Another vital backdrop against which to evaluate the two existing environmental law drafts is Hungary’s judicial and administrative structure. It is this structure which will determine how and whether those policies incorporated in the two drafts will succeed.

The Hungarian judicial structure, historically and at present reflects a familiar tiered system of power. Although it currently is a source of much stagnation, it only needs a jump start and some procedural oiling in order to bring it to life. Therefore, the drafters deserve credit for retaining its basic structure.

The Hungarian administrative structure is another story. In the past, the administrative infrastructure was a mysterious labyrinth of decision-making power which confused even the architects of the system. As a result, the system itself proved to be its own greatest adversary in the adjudication of pollution cases. The system has recently been rebuilt, reflecting a reshuffling of administrative power more than a massive over-

56. See id.
57. See Wassersug, supra note 2.
58. See id.
haul. Yet, like the judicial system, it is arguable that the drafters were wise to build on the existing system, rather than attempting to recreate it from scratch.

A. The Judicial System: Cause of Stagnation

The Hungarian Court system is generally arranged in the same tiered structure it occupied over the past forty-five years. It consists of local district courts, with appellate review to the county courts or the Budapest municipal court, whose decisions are reviewed by the Hungarian Supreme Court. This is similar to the American federal or state structures. Newly established in 1990, however, is the Constitutional Court. Its jurisdiction includes the exclusive power to adjudicate environmental and civil rights cases.

Despite the seemingly well-structured nature of the court system, its judges and lawyers are extremely inexperienced. This is primarily due to the thirty-three years of Communist rule, when the Party and its administrative structure dictated the "law" for all legal actions which affected private parties. Bándi explains:

The role of the administrative organs and the role of the courts were separated from one another. The administrative organs were responsible for the active interference into social life, while the courts [played] a rather passive role in deciding legal disputes . . . [Today], the basic role of the courts has not been changed for the time being . . . the judicial supervision in most of the spheres of the society and the direct activity of the courts represents a new concept . . .

Although the Constitutional Court holds the power to decide environmental cases, it has yet to hear or decide any substantive case since its establishment. András Homonnay, who is also a practicing Hungarian lawyer states:

Under communism there was a state administration, and it was separate from the court . . . Now it has changed, but not enough. It takes time

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60. As in the United States, the Hungarian court system is composed of courts with generalized jurisdiction; however, there are specialized courts, namely the Hungarian labor courts and the military courts. See Gyula Bándi, The Role of Courts in Environmental Protection in Hungary (Feb. 1991) (unpublished manuscript on file with the Michigan Journal of International Law).

61. Id.

62. Id. at 1–2 (emphasis added). Note also that up until June 26, 1991, the judiciary had only reviewed approximately 30 such administrative cases. See Bándi, supra note 6, at 22.
Hungarian Environmental Reform

As a result of the extremely limited practice of the Hungarian courts in adjudicating civil disputes, the more experienced administrative system has led in tentatively addressing these issues. In fact, unlike the American legal system, which utilizes a combination of judicial, legislative and administrative sources of law, Hungarian environmental reform focuses on administrative methods.

B. The Administrative System: Overlapping Authority

Since 1987, the key environmental protection agency in Hungary has been the Ministry for Environment and Regional Policy. This organization, however, does not exercise complete control over environmental protection efforts. In fact, the responsibilities, powers, and expertise it shares with other overlapping ministries lead to inefficient use of time and frequent intragovernmental disputes. A limited review of the history of these overlapping organizations and their respective spheres of influence and sources of information sheds light on the current situation.

In 1952, the Hungarian government established an administrative body called the National Water Authority (NWA). It held primary responsibility for managing the intricate system of water channels that supplies the country with water. The NWA also controlled twelve regional District Water Authorities (DWAs) located throughout the country. The DWAs were responsible for monitoring, inspecting, authorizing permits and assessing penalties.

In 1974-75, however, it became clear that the NWA and its district offices were unable to handle both the significant responsibility of controlling water supplies and the early vestiges of water pollution. Consequently, the government modified its administrative structure by establishing another agency to operate concurrently with the NWA. This organization was named the Hungarian Environmental Protection Agency (EPA), sometimes referred to as the National Environmental Protection

63. Homonnay, supra note 2 (emphasis added).
64. Government Decree No. 43/1990, reprinted in ENVIRONMENTAL DIVISION, WORLD BANK, supra note 7, at 23.
65. See Literathy, supra note 2.
66. Id.
67. Id.
68. Kilényi, supra note 59, at 40.
It operated through the Hungarian Secretary of State, using the newly formed Environmental Protection Institute (EPI) as its research facility.70 This seventeen member organization, with representatives from the local governments, was primarily responsible for providing recommendations and comments on all legal drafts involving environmental issues.71

Géza Kilényi, Professor of Hungarian Administrative Law and Director of the Hungarian Academy of Sciences’ Public Law Research Center, argues that the EPA was largely ineffectual, despite its separate budget and staff. He explains that “[the EPA was] composed of leading scientists . . . not vested with any political clout. Reduced to grinding out scientific papers and making recommendations for policy-makers, the [EPA] was unable to effect needed changes in environmental policy and enforcement of legislation.”72

Literathy, Director of VITUKI, argues that in addition to its weak effect on environmental reform, the simultaneous existence of the EPA and the NWA also caused frequent conflicts.73 One source of conflict concerned the use of statistical measurements and analyses by each of the two organizations.74 The Hungarian NWA enlisted the services of VITUKI, while the EPA used its own source, the Environmental Protection Institute, to carry out its research.75 Frequent disputes over the scientific, legal and political conclusions drawn from the research caused a significant rift between the two groups, and left little room for environ-

69. This creation of an EPA which was tethered to the inner layers of the government via the Secretary of State, seems to indicate the predictable Communist emphasis on control over all aspects of the industry, which in this case included water control.

70. See Literathy, supra note 2. As the Director of VITUKI Water Resources Institute, Dr. Literathy has worked closely with many of the various environmental ministries and thus provided this information on the evolution of Hungary’s environmental administrative structure. Note that other sources have different translations of the titles of these organizations. For example, what Literathy calls the Environmental Protection Agency, Géza Kilényi, Professor of administrative law and Director of the Hungarian Academy of Sciences, calls the Council for Environment Protection.


72. Kilényi, supra note 59, at 38.

73. VITUKI has played a significant role in the statistical analysis of Hungary’s water pollution levels over the past 30 years. In 1952, the government began to use the Research Center as a resource institute and provided significant funding to the Center. In 1985, however, there was a significant change in the method of funding for the Center. Prior to 1985, the Center operated as part of the regularly maintained state communist budget. However, from January 1986 on, the Center began to work on an enterprise basis, with no official state budget. Instead, the Center worked as an independent contractor. Literathy, supra note 2.

74. See id.

75. Id.
mentally-protective initiatives.\textsuperscript{76}

These disputes continued until 1986, when the Ministry of Environment and Water Management was established. This ministry oversaw the previously conflicting organizations: VITUKI, the EPA and the group of twelve District Water Authorities, which were renamed Environmental Protection Inspectorates.\textsuperscript{77} According to Literathy, these changes helped considerably in ironing out management conflicts by eliminating the friction between the EPA and the NWA.\textsuperscript{78} Similarly, the new Ministry was able to enlist the research and administrative expertise of both VITUKI and the EPI because there were no longer two conflicting agencies, but rather one umbrella ministry.\textsuperscript{79} However, this administrative structure changed one more time before it reflected the current Hungarian system.

In 1987, the Hungarian Parliament established the current administrative system.\textsuperscript{80} In this new system, the Hungarian government granted administrative control over most environmental issues to the newly formed Ministry of Environment and Regional Policy.\textsuperscript{81} This Ministry has as its subordinate a revisited version of the EPI which now coordinates the twelve regional Inspectorates responsible for local monitoring, inspecting, authorizing permits, and setting penalties for violations.\textsuperscript{82}

This new administrative structure is adequately equipped to handle the challenges of an actively working environmental protection program. It includes a potentially authoritative Ministry which occupies a position similar to that of the U.S. Environmental Protection Agency.\textsuperscript{83} It uses a system of regional Inspectorates. The Minister appoints a National Inspector General to organize this system and to report all regional

\begin{itemize}
\item 76. Id.
\item 77. Id.
\item 78. Id.
\item 79. A few other governmental organizations formed during the 1970s and early 1980s, which were inconsequential to environmental protection, but help fill out the picture of an extremely fragmented government initiative to control water pollution. For example, the National Office for Environmental Protection and Nature Conservation was created by the Act on Human Environment. This Office accomplished little in the way of uniting the other organizations, because it only maintained authority over the issue of nature conservation. All administrative decisions regarding the environment were still made by "various ministers and a baffling number of other governmental bodies." Kilényi, supra note 59, at 38. Furthermore, the Office's lack of political weight rendered it "ineffective even as a coordinating body." Id.
\item 80. Id.
\item 81. Sajd, supra note 71, § 45.
\item 82. See id. § 64.
\item 83. Id.
\end{itemize}
monitoring and inspection statistics.\textsuperscript{84} In short, the system includes an outreach network that could successfully be used to evaluate, monitor, and assist all or most of Hungary's regional areas.

However, two aspects of the administrative structure weaken its effectiveness. First, like the judicial branch, the Hungarian administrative branch has limited experience in the field of environmental protection.\textsuperscript{85} Although the different administrative bodies had historically been used by the Communist Party as a means of controlling the activities of citizens, companies, and organizations for over thirty years, they had not been used for environmental improvements.\textsuperscript{86} As a result, the current government administrators are somewhat uncomfortable with their new duties.\textsuperscript{87} Encouragement by the administrators of more established environmental management systems, such as those found in the United States, may improve this situation.

The second weakness in the current Hungarian administrative system is that the new Ministry for Environmental and Regional Policy exercises only partial control over the spheres of environmental decision-making. It shares the decision-making task with at least two other ministries: the Ministry of Traffic, Water and Communication, and the Ministry for Social and Health Affairs.\textsuperscript{88} Tension and confusion due to overlapping spheres of influence, power, and responsibility result in constant procrastination and buck-passing.

For example, the Ministry of Environment and Regional Policy sets policy targets, writes and elaborates on proposals for Parliament's Council of Ministries, and coordinates both environmental protection measures

\textsuperscript{84} See id. §§ 70-71.
\textsuperscript{85} Homonnay, supra note 2.
\textsuperscript{86} See Bándi, supra note 6. See also ENVIRONMENTAL DIVISION, WORLD BANK, supra note 7, at 29 (an environmental impact assessment procedure to investigate projects that would have a significant effect on the environment was only made mandatory in 1983 and does not apply to joint ventures or private investments).
\textsuperscript{87} See Kisgyörgy, supra note 2.
\textsuperscript{88} Kilényi, supra note 59, at 39-40. Again, according to VITUKI's Director, Dr. Literathy, the old tensions have been reborn. In this round, however, the confusion is potentially greater. Now, VITUKI often takes on contractual research projects from the Ministry of Environment and Regional Policy, since that ministry no longer has adequate research facilities. Id. VITUKI, however, simultaneously carries out research for the Ministry of Traffic, Water and Communication. Id. Recently, in fact, VITUKI has actually been spending 60\% of its research efforts on behalf of the Ministry of Environment and Regional Policy, and only 40\% of its efforts on the Ministry of Traffic, Water and Communication, the latter being its official government sponsor. Id. As a result, Dr. Literathy reports that there is considerable tension among these two overlapping ministries, presumably because they are wrestling for the undivided attention of VITUKI. Id.
and water management proposals.89 Meanwhile the Ministry for Social and Health Affairs sets specific limits for potable water and emissions of polluting industries. Further complicating the issue, a third ministry, the Ministry of Environment and Regional Policy enforces those limits. Similarly, the Ministry for Construction and Settlement Development controls environmental pollution in settlements, while the Ministry for Environmental and Regional Policy carries out those directives.90

The division of power within the administration shows that “[d]espite the promising beginning, the Ministry must still overcome the built-in inertia that decades of fragmented authority has fostered.”91 This inertia is the primary source of the difficulty, rather than the actual structure of the Ministry of Environment and Regional Policy. Therefore, the two environmental reform drafts properly avoided attempts at completely restructuring this administrative system. Although the first draft relied on the present general structure, it did mention the possibility of a single change. The first draft suggested that all administrative power regarding environmental concerns be concentrated in the Ministry of Environment and Regional Policy alone. Perhaps, by consolidating authority, this one change would solve the problem of inertia. Thus, without revamping the entire administrative system, these two drafts attempt to enact environmental protection.

IV. THE NEWBORN ENVIRONMENTAL LEGISLATION: TWO DRAFTS

The two fledgling environmental drafts both seek to establish a working legal system of environmental protection. The first, released in January 1992 by András Sajó, Professor of law at the Hungarian Academy of Sciences, runs approximately 300 pages and covers most aspects of a legal and procedural environmental protection framework.92 The second, written by lawyers within the Ministry of Environment and Regional Policy as a response to Sajó’s Draft, is a much slimmer version of approximately twenty pages which avows the same objectives, but seeks them in a slower and more circumspect fashion.93

89. Id. at 39.
90. Id. at 40. See also ENVIRONMENTAL DIVISION, WORLD BANK, supra note 7, at 23.
92. See Sajó, supra note 71.
93. Ministry of Environmental Protection and Regional Policy, Hungarian Draft Law on Environmental Protection (1992) (English summary translation on file with the Michigan Journal of International Law). Note that one extremely significant factor in any comparison of the two drafts that must be taken into consideration is the fact that the only form of the Ministry’s draft that is currently in English is a summary only. Thus, comparisons dealing with complexity are limited, and criticisms based on an assumed lack of detail may be due
Both drafts have been highly criticized. Sajó's Draft, an academic composition which seeks to incorporate procedural, evidentiary, and statutory reform within its monumental depth, has been criticized by government officials and lawyers as being too ambitious, too tedious, and oddly enough, too vague in some areas. The Ministry draft, a weaker but terser version, has been criticized by environmentalists in both Hungary and the United States as hypothetical, non-committal, and impotent. Both drafts have been criticized for the extended preparation time due to the seemingly endless set of debates, criticisms and revisions.

However, both drafts represent milestone achievements when viewed against Hungary's political, economic, judicial, and administrative backdrop addressed earlier. Furthermore, the Hungarian government took merely three years to propose, draft, and critique two comprehensive environmental reform bills, while Americans delayed environmental reform for decades. Although congratulations are in order, praise should come cautiously, as many hurdles must be overcome before the Hungarian environment sees tangible improvements.

A. A Scholar's Draft: More Than a Mouthful

Sajó's proposed Environmental Protection Code of Hungary is a monumental effort to draft a statutory body of law which includes remedies, penalties, incentives, and goals, as well as procedural, technical, and administrative planning measures. As such, at times it covers too much detail, and at other times too little.

Sajó's Draft is nevertheless a progressive, useful legislative reform bill which clearly seeks to soothe the frantic worries of unpracticed government officials. It does so by supplying a wide variety of procedural, technical, and administrative techniques to assist in the implementation process. More importantly, it aggressively pushes the Hungarian government forward in its environmental reform initiatives by implementing demanding rules which require increased state responsibilities in gathering and disseminating information to the public. It also

to the fact that this later draft is only in summary form. It appears that some criticisms of the Ministry's draft have overlooked this factor. See Bowman & Hunter, supra note 14, at 951-52.

94. See Homonnay, supra note 2; Kisgyörgy, supra note 2.

95. See Bowman, supra note 2; Hunter, supra note 2.

96. See infra part IV.A.2. Note that even the Ministry for Environment and Regional Policy found the draft difficult to comprehend, despite its initial endorsement of the project. Wassersug, supra note 2.

creates and justifies the public’s standing to sue on behalf of the environment. Finally, Sajó’s Draft creates stringent rules requiring Environmental Impact Assessments (EIAs) before the commencement of new industrial projects.98

In order to evaluate this draft comprehensively, it is necessary to separately address each of the following five most significant changes: 1) administrative organization, 2) procedural requirements, 3) comprehensive state responsibility, 4) information gathering and dissemination and, 5) mandatory Environmental Impact Assessments for industrial projects.

1. Administrative Organization

In order to carry out the extensive duties Sajó places upon the Ministry, his draft establishes a complex administrative system of organization. It builds upon the existing administrative structure of the various authorities, councils, inspectorates, and boards that have made up the structure of environmental administration in Hungary for the past thirty years. As such, it is a workable piece of legislation which will implement the existing structure in a new and useful manner and create a meaningful system of checks and balances.

Sajó adds two advisory boards to the existing structure of the Ministry of Environment and Regional Policy which now operates and gathers information from its twelve regional Inspectorates.99 The first board is derived from the earlier Environmental Protection Agency.100 Sajó calls this seventeen-member organization “the Environmental Protection Council.” It functions as an advisory board to both the government and the Ministry.101 Explicitly allocating a separate budget and staff to the Council, Sajó commissions it to review and comment on all environment legal drafts, and to present a yearly state of the environment address.102 Additionally, Sajó recreates a Board of Environmental Experts, composed of seven scientific and professional experts who respond to specialized questions from the government and ministers.103 These individuals would be appointed by the Prime Minister for six year terms and are “required” to deliver politically unbiased scientific

98. See Sajó, supra note 71, §§ 377, 430.
99. Sajó, supra note 71, §§ 76–80, 84–87 (establishing the Environmental Protection Council as an advisory board of the government and the Board of Environmental Experts as a scientific-professional board).
100. See supra note 71.
101. Sajó, supra note 71, § 76.
102. Id. §§ 76(2), 77.
103. Id. §§ 84, 86.
opinions. Sajó thus uses two advisory boards to direct and counsel his administrative decisionmakers. This administrative structure also establishes a theoretical system of advisory checks and balances. By forming an independently funded legal advisory board, as well as an expert board that supplies unbiased scientific analysis, Sajó’s Draft establishes an administrative system with the potential to develop a substantial body of environmentally protective laws and regulations.

2. Procedural Framework

Although Sajó’s administrative framework encompasses most administrative necessities, his procedural rules may fail to help the Hungarian courts navigate through the almost non-existent procedural framework of the judiciary. Sajo’s procedural rules still prove helpful in pinpointing the areas of procedural guidelines which will need further elaboration once an active court system and an enacted environmental protection law exist.

Sajó’s procedural guidelines are inadequate for two reasons. First, they are scattered throughout the text of his draft; they fail to provide a cohesive procedural framework. Second, they try to cover too many difficult subject areas in too little detail.

The dispersed nature of the procedural rules is at the same time the most distracting aspect of the rules and the most easily remedied. Located in four major sections of the draft, they are found in provisions regarding “Rule Making,” and then again in the distant materials concerning “General Rules of Administrative Protection Procedure.” Likewise, some procedural guidelines are found in the section entitled “System of Environmental Liability,” and also in the section called “The State of the Environment Audit,” (ESA). Although some of these rules seem logically arranged in certain sections, such as the separate rules on environmental audits, others seem lost. For example, the provisions regarding pre-trial discovery are located in the chapter on environmental liability, directly following unrelated materials concerning liability limitations. Despite their widespread location, however, these rules, guidelines and procedures could be coordinated and relocated to form a cohesive checklist of procedural activities, not unlike those found in the

104. Id. § 85.
105. Id. §§ 183–88, 369–86, 553–64, 569–73, 617.
106. Id. §§ 183–88, 369–86.
107. Id. §§ 553–64, 569–73, 617.
108. Id. § 553.
U.S. Federal Rules of Civil Procedure.\textsuperscript{109}

The greater difficulty lies in the nature, content, and intent of the rules. In this draft, Sajó seems eager to establish procedural rules for most aspects of litigation. His wide array of topics portray this broad intent, but, in pursuing this goal, he encompasses both too much and too little subject matter.

Too much subject matter is covered because these materials establish both broad and environmentally specific rules ranging from basic trial and litigation guidelines to regulations concerning standing, costs, penalty reductions, and litigation fees.\textsuperscript{110} By comparison, in the U.S. system, such rules are located in several lengthy compilations such as the Federal Rules of Civil Procedure and the Federal Rules of Evidence. The U.S. rules are laid out separately from most substantive law statutes. Such procedural issues in Hungary should likewise be separately addressed, with only the environmentally-specific rules necessary to carry out the law incorporated into the body of the draft.

At the same time, too little subject matter is covered. Although Sajó addresses many important procedural topics, he cannot cover any of them in the depth needed to guide an inexperienced judiciary. Such an attempt would require expanding his already lengthy draft by several hundred pages of procedural rules. For example, Sajó describes his proposed system of "pre-trial discovery" in a one-page section of his draft.\textsuperscript{111} This rule requires that "the party reasonably assumed to be the operator" provide the answer to the following three interrogatories within 30 days: "(i) [list] the applied machinery or equipment and technology, including means of protection and extraordinary operations; (ii) [list the] hazardous materials used and their concentration; [and] (iii) [list all] illegal emissions."\textsuperscript{112} The rule’s only other requirement states that the operator must provide [data] "related to the activity which is allegedly connected to the damage."\textsuperscript{113}

This limited instruction on pre-trial discovery is clearly inadequate to handle the complexity of these proceedings, particularly in environmental litigation. By comparison, the annotated court rules for U.S. pre-trial procedures alone occupy approximately forty pages.\textsuperscript{114} Thus, this draft

\begin{thebibliography}{99}
\item \textsuperscript{109} \textit{FED. R. CIV. P.} 26-37.
\item \textsuperscript{110} Sajó, \textit{supra} note 71, §§ 183–88, 369–86, 553–64, 569–73.
\item \textsuperscript{111} \textit{Id.} § 553.
\item \textsuperscript{112} \textit{Id.}
\item \textsuperscript{113} \textit{Id.}
\item \textsuperscript{114} \textit{FED. R. CIV. P.} 26-37.
\end{thebibliography}
does not adequately outline specific procedural rules and remedies.

Despite such shortcomings, Sajo's procedural guidelines prove extremely useful in highlighting areas of administrative procedure which will require extra attention in the drafting stage. There will undoubtedly be much dispute over which individuals and groups can become parties to an environmental lawsuit, what kind of information should be revealed by a polluting corporation, and how an appellate review system should operate. These are precisely the procedural areas that Sajo's draft emphasizes.115

3. State Responsibilities

With the above administrative and procedural framework in place, Sajo approaches the body of his environmental reform law. There are three foci of his attention: increased state responsibilities, information gathering and dissemination, and Environmental Impact Assessments (EIAs).116 The Draft addresses these areas of reform in considerable detail. Together, these reforms create a potentially formidable defense against environmental degradation.

The first of these foci, the Ministry's increased responsibilities, is essential in carrying out the remaining two objectives. Without a responsible Ministry, every activity from gathering statistical information to evaluating EIAs would be infinitely more difficult. Sajo's Draft places significant responsibility for environmental protection on the national government, and the majority of such control in the hands of the Ministry of Environment and Regional Policy. For example, section 45 of the draft would require that "[i]n harmony with the available resources and the democratically expressed needs of society the State shall institutionalize and operate a public administration system which is capable of integrated environment protection."117

Section 46 then imposes on the State "a duty to provide for the safe disposal of waste against reimbursement . . . 118 Reaching further than just listing the general goal of state-initiated and regulated environmental protection, the draft specifically lists the methods by which the Hungarian government is required to carry out these goals.

116. Id. §§ 45, 96–106, 189, 430–89.
117. Id. § 45 (emphasis added). Note that considerable attention is paid to economic limitations on environmental protection. This is significant because a similar emphasis on economic limitations found in the Ministry's draft is criticized for being too weak by advocates of Sajo's draft. See also Bowman & Hunter, supra note 14, at 951–52.
118. Sajo, supra note 71, § 46 [emphasis added].
The protection of the environment is effected [sic] by the State primarily by creating and operating central and regional environmental installations, operating environment protection funds, supporting protection research and education, subventions, and tax and customs preferences. The Ministry is also required to prepare and enforce an Environmental Protection Plan in conjunction with all affected local and regional governments. This plan would provide detailed instructions on the implementation, standards, and requirements of the state’s environment protection goals.

In particular, the Minister sets water emission values, taking into consideration the “holding capacity” of the environment, the global effects of the emission, and synergisms or dangerous interactions with other emissions. The Minister must also establish a system of water quality indicators after extensive consultation with independent experts and members of the public.

Thus, Sajó’s Draft places new-found responsibilities of environmental protection on the state through its main authoritative body, the Ministry of Environment and Regional Policy. These broad responsibilities form the foundation necessary to carry out the encompassing vision Sajó unfolds in the remaining two areas of environmental reform discussed below.

4. Information Gathering and Dissemination

Sajó’s Draft places considerable emphasis on the importance of gathering and disseminating regional information concerning environmental conditions in Hungary. This emphasis, and the detail with which he describes his proposed information system, could ultimately be responsible for the initial impetus behind launching a large-scale effort to repair environmental damage and curtail further harm. As such, it is a praiseworthy piece of proposed legislation.

Chapter V of the section on Environmental Protection Management is devoted solely to data and information collection. There, the Draft lists both national and local information gathering duties to a fine degree of specificity. This chapter begins with the essential caveat that those

119. Id. § 48 (emphasis added).
120. Id. §§ 51–55.
121. Id. §§ 227–28.
122. Id. § 229(5)–(6).
123. Id. §§ 96–106.
124. Id.
who pollute are responsible for reporting their pollution activities. It orders:

Those who consume (utilize) natural resources providing those as a service, or in the course of business activities, are obliged to send all data about the consumption of the natural resources and about the strain (impact) upon the environment—as well as evaluations based upon this information and their other analyses, and documentation concerning their environmental protection technology and its application—to the Minister or to organizations specified by the decree of the Minister . . .

In addition to requiring self-regulation by companies and industries, Sajó’s Draft requires the Regional Inspectorate to gather the information and make the following assessments:

1) the quantitative and qualitative strain on the environment and any noticeable changes “in coherent statistical form and in [an] internationally comparable manner;”
2) the sources and causes of damage to the environment “including detailed tabulations necessary to determine causal relations of damages;”
3) the continuous environmental effects of state measures.

This draft requires regional, as well as national, planning of environmental protection. The requirements are stiff and aggressive. They are fashioned to account for environmental deterioration when planning projects. For example, Sajó orders:

Land use planning should evaluate the state of the region’s environment in a complex fashion, and . . . [should thus] determine the allowable strain on the environment . . . The local and regional land use plans shall be determined so that the environmental effects permitted do not burden the neighboring and the national environments.

The need for meticulously drafted rules of national and regional information-gathering is apparent from the visible uneasiness of government officials who will be responsible for carrying out such tasks. Sándor Kisgyörgy, previously mentioned as the Department Head for Water Pollution in the Ministry of Environment, said in an interview that he needed “explicit instructions [rather than] suggestions.” He explained, “Right now, [comprehensive environment information systems]
do not exist." Kisgyörgy also complained that even Sajó’s draft, despite its volume, contained insufficient detail concerning water issues. He states, “There are only four paragraphs which [specifically pertain to water management.]” Andráš Homonnay identifies the same problem with a warning. “There is not much of a system of precedents. Most people cannot keep up with the ever changing laws. My opinion is that they are not used to doing it.” Lack of prior experience in dealing with environmental protection issues necessitates detailed instructions to lead Hungarians through the process.

Sajó’s meticulously detailed description of a mandatory information gathering system seems to be what at least some government officials are seeking. His deliberate and substantial emphasis on national and regional information gathering should be commended, not criticized, for its detail. Not only does Sajó outline a pervasive information gathering system, he places great emphasis on disseminating this information to the public. It is here that his draft most distinguishes itself from the Ministry’s Draft, for he makes it unequivocally clear that Hungarian citizens must have unhindered rights to environmental information.

Part IV of Sajó’s draft is devoted to “social participation in environmental protection proceedings.” In his characteristically direct style, he mandates:

*The law protects the citizens’ right to participate in public (state and self-government) decisions concerning the environment . . . .* In order to protect the responsible participation of society, the state and other users of the environment shall follow the state of the environment and environmental public health and *they shall make these data accessible to the public*, except where the law states it differently to protect lawful interests.

Sajó ventures further, however, and explicitly requires that several different methods of disseminating environmental information be implemented by the State. For example, he requires that government officials use the mass media to “provide the public with information on the most important data concerning the environmental pollution . . . .”

130. *Id.*
131. *Id.*
134. *Id.* §§ 189(1), § 190(1) (emphasis added).
135. It is important to note here that Sajó does allow room for the protection of State and private trade secrets. *Id.* § 192.
136. *Id.* § 191(1).
He advocates publicly accessible data banks and mandatory publishing requirements for "planned environment protection and environmentally significant decisions," as additional methods of informing the public. In short, Sajó leaves little room for the government to squirm out of its duty to inform the public.

The rights of Hungarians extend further than their access to information. In fact, Sajó's Draft grants the public the broad power to affect the outcome of most State environmental activities. He grants considerable power and legitimacy to formal public interest "associations" which are registered with the State. These associations have the recognized right to participate in: 1) proceedings addressing the "transformation of landscape or surface;" 2) drawing up zone projects and environmental protection plans; 3) proceedings concerning building permits; and 4) proceedings concerning the location of construction plans.

If organized into one of these formal "associations," Hungarians have standing to sue on behalf of the environment. Section 550 states in pertinent part that "[a] citizens' environmental association, the Inspectorate General, or a state organization entitled by decree . . . can sue for damage done to elements of the environment or environmental systems . . ." This sweeping and unmitigated power to sue on behalf of the environment is a significant power which has worried some governmental officials. Kisgyörgy voices this fear: "There is a water monitoring system . . . but the bridge with the public has not yet been built. The question is—are they mature enough?" Elaborating, Kisgyörgy explains that the public knows so little about balancing environmental interests with economic necessity that the outcome could be disastrous. The solution, he says, is often to downplay the gravity of environmental damage. The consequence, he adds, is growing public distrust. "We are accused of lying, of giving too optimistic of a picture. [The issue is] what is the price of information?"

Kisgyörgy's concerns are far from isolated. András Homonnay, the Hungarian lawyer named to write another draft environmental law, echoes these fears in his comment: "It will take time until [the public] is trained

137. *Id.* § 191(1)-(7).
138. *Id.* §§ 198-205.
139. *Id.* § 199(1).
140. *Id.* § 204.
141. *Id.* § 550(1).
143. *Id.*
that environmental problems are always a matter of compromise.144 He
describes a recent move by the government to dispose of toxic wastes in
a small village in southwestern Hungary. He explains that a "technically
absolutely safe" disposal area surrounded in 100 meters of thick clay
existed in a mountainous area, but the local villagers blocked this action
with their public opposition.145 He explains that "[t]hey are not cleared
up about the real danger, they only know that the toxic wastes are stored
near their village. Now they have the right to oppose."146

However, it is precisely this newly granted right to participate and
influence the governmental actions which will force a hesitant Parliament
to address these issues. For this reason, Sajó's draft has been hailed by
both American and Hungarian scholars as an excellent example of a
legislative proposal granting environmental control to those most affected
by its degradation: the public.147

5. Environmental Impact Assessment

Another significant achievement of Sajó's Draft is his requirement for
Environmental Impact Assessments (EIAs).148 The EIA provisions
require any company or organization, including the State, embarking upon
a new project that will have a "substantial effect on the environment," to
file an EIA before commencing any such activity.149 These provisions are
worth reviewing in some detail, for if such thorough procedures were
heeded, they would provide worthy assistance to environmental protection
efforts.

Sajó's Draft contains a lengthy list of what information must be
included in an EIA: the location of the proposed activity, the state of the
surrounding environment, the capacity of that environment to sustain any
industrial burden, any possible mitigating efforts to repair or improve
environmental damages, expected consequences to public health,
environment and economy, and the direct and indirect effects of possible
waste disposal and recycling.150

144. Homonnay, supra note 2.
145. Id.
146. Id.
147. See Wilkinson, supra note 2; Bowman, supra note 2; Hunter, supra note 2.
148. Sajó, supra note 71, §§ 429–89.
149. Id. § 429.
150. Id. § 430(a)–(g). Note that some form of these EIA requirements must also be carried
out for those installations which are currently operating. In those cases, Sajo suggests one of
two alternatives. The first recommends that EIAs only be required from July 1, 1994 on. The
second suggestion authorizes the Minister to determine individually by decree which activities
must include an EIA, with the possibility of retroactive effect. Id. § 435.
The above information is then sent to the appropriate environmental Inspectorate which evaluates the EIA and determines whether to grant a license to the proposed activity. At this point, the Inspectorate also has the power to require the requesting organization to supplement the existing EIA with additional information, or to research and develop better environmentally protective alternatives. These requirements would prove of great assistance in requiring both domestic and foreign industries to include environmental damage in their cost-benefit analyses. Although such requirements place a significant burden on fledgling industries, they force both industry and government to take note of environmental deterioration.

In summary, Sajó's Draft seeks to encompass all aspects of a massive system of environmental protection: its administration, its procedures, and its responsibilities. It simultaneously attempts to address every concern, lack of understanding, lack of direction, or fear on the part of a hesitant, inexperienced bureaucracy. This is an ambitious task, but one that Sajó has gone to great lengths to achieve. His successes and his far-reaching vision deserve praise.

B. A Ministry’s Draft: Too Trim But Still Ambitious

In comparison to Sajó’s Draft, the environmental protection bill prepared by the Ministry of Environment and Regional Policy is a terser, weaker version. Despite its more passive language, many of its provisions are remarkably protective of the environment, and most of them require the Hungarian government to implement far-reaching changes.

1. Still Strong on Reform

The Ministry’s Draft seeks to enforce many of the same provisions as that of Sajó. First, it requires increased State responsibility for protecting the environment. Second, it underlines the importance of data collection and distribution. Third, it grants public standing to individuals to represent the environment in lawsuits. Lastly, it requires the implementation of Environmental Impact Assessments. This draft is an ambitious move on the part of Parliament to tie itself down to specific, manageable duties, although it is not as encompassing as Sajó’s Draft.

In the Ministry’s Draft, Parliament has saddled itself with the

151. Id. §§ 473–78.
152. Id.
following significant responsibilities: "Setting up an institutional framework to safeguard environmental values, to serve the harmonized connection of man and environment, and to ensure an environment serving human health and welfare."\(^{153}\) This mandate is very similar to that provided by Sajó, who requires the State to "institutionalize and operate a public administration system which is capable of integrated environmental protection."\(^{154}\) In fact, the Ministry’s version continues to specifically state that "[t]he elements of the environment should be protected against any effect, burden or impact which harmfully effects [sic] the regeneration capacity, is harmful to the human health, or damages the human living condition."\(^{155}\) Although a critical eye will note the use of the word "should" instead of "shall," as well as the Ministry’s subtle emphasis on pollution’s effect on human interests rather than the environment, this mandate is far from empty.

The Ministry’s Draft, like Sajó’s Draft, establishes a useful data collection and distribution system which emphasizes citizens’ rights.\(^{156}\) Because the Ministry’s English translation is in outline form, however, it is difficult to compare the depth of the two drafts’ discussion on information collection and dissemination.

Despite such comparative difficulties, the Ministry seems to establish an information system which is as powerful as that found in Sajo’s Draft.\(^{157}\) In Articles 38 and 39, the Ministry’s Draft creates a National Environmental Information System with territorial inspectorates which carry out data collection throughout Hungary.\(^{158}\) This data will be not only available to the public, but also actively disseminated to the public through an educational system.\(^{159}\) The Ministry’s Draft states: "[T]here exists a right of citizens to obtain environmental knowledge and develop their own knowledge. The part of the Program [on environmental pollution] for general school education should be built into the National Education Plan."\(^{160}\) More specifically, the Ministry Draft requires that "[t]he state, the local governments and the users shall record the state of the environment and make the data available . . . The plans of decisions

\(^{153}\) Ministry of Environmental Protection and Regional Policy, supra note 93, art. 1(1) (emphasis added).
\(^{154}\) Sajó, supra note 71, § 45.
\(^{155}\) Ministry of Environmental Protection and Regional Policy, supra note 93, art. 11.
\(^{156}\) Id. arts. 38, 42, 104.
\(^{157}\) See Ministry of Environmental Protection and Regional Policy, supra note 93.
\(^{158}\) Id. art. 38(1)–(3).
\(^{159}\) Id. arts. 42, 43.
\(^{160}\) Id. art. 42(1), (6) (emphasis added).
affecting greatly the environment must be publicized." Not only does the Ministry's Draft provide for the gathering and disseminating of information, but like the Sajó Draft, it instills important rights in public environmentalist groups. Most importantly, it grants these groups the right to initiate environmental protection litigation.

The Ministry's Draft also establishes an Environmental Impact Assessment requirement, similar to that found in Sajó's longer draft. Under the Ministry's version, such EIAs would require a preliminary study of "short and long term social, health, and economic effect." More specifically, like Sajó's EIA provision, the Ministry's draft requires the following information regarding any "activities having a significant impact on the environment:" studies of the current state of the environment in the target area, methods of safe waste disposal, possible mitigating measures, and possible impacts on health, environment, and economy. This EIA must then be sent to the Environmental Mediation Council which gives an opinion on whether such an activity is allowable.

In sum, the environmental protection act drafted by the Ministry echoes the requirements of the Sajó Draft at almost every turn. It requires information gathering and dissemination, public participation, and EIAs as prerequisite to any industrial project which would adversely affect the environment.

2. Greater Emphasis on the Economy

What the Ministry's Draft does not include is as noticeable as what it does include. Compared to the Sajó Draft, there is a greater emphasis on economic considerations, a limited number of procedural guidelines, and a weaker system of administrative checks and balances. All told, however, this draft is still a worthy piece of reform legislation.

One concrete criticism might be the draft's greater concern with the effect of environmental protection legislation on the economy. Unlike Sajó's draft, the Ministry's Draft predictably weighs the economy's health as at least as important as that of the public. Article 25 states: "In decision-making, the economic, economy and business aspects and the

161. Id. art. 104(1), (3) (emphasis added).
162. Id. art. 103.
163. Id. art. 21.
164. Id. art. 68(1).
165. Id. art. 69.
166. Id. arts. 24, 29.
environmental aspect should equally be taken into consideration."\textsuperscript{167} Although this emphasis on the economy might be a more realistic approach, it predictably diminishes the importance of environmental protection. Because most environmentally safe business ventures will cost more in the short-term than those which do curtail wasteful by-products, environmental protection measures could almost always be avoided because of "economic considerations." As a result, the Ministry’s Draft may allow a much weaker water pollution reform initiative.

A second criticism of the Ministry’s Draft is that it contains inadequate procedural guidelines. Article 59 simply states that "[a] trial should be held if the party wishes so, or in the case of ex officio procedure, if there are more than 10 interested parties."\textsuperscript{168} This does not explain to a novice judiciary precisely how and when such a trial should occur, and how discovery, correspondence, and preliminary disputes should take place. Although it may be appropriate to write a separate set of procedural guidelines for all cases, not just environmental ones, as discussed, \textit{supra}, one sentence is inadequate even to provide instructions on where to seek more thorough procedural rules.

A last fair criticism of the Ministry’s Draft is that its administrative structure of checks and balances is weakened by its lack of economically independent advisory boards as found in Sajó’s Draft. In particular, the “Environmental Mediation Council” created by the Ministry’s draft does not control its own budget, as does the council equivalent in Sajo’s draft.\textsuperscript{169} Instead article 29 merely states that this council “shall be set up parallel to the government,” without describing any separation of power or self sufficiency.\textsuperscript{170}

All told, the Ministry’s Draft suffers from deficiencies in particular areas which Sajó’s Draft covers. Still, it mandates an unprecedented state effort to protect the environment by echoing many of the Sajó provisions concerning topics such as information gathering and dissemination, public standing to sue on behalf of the environment, and the importance of EIAs.

\begin{itemize}
  \item \textsuperscript{167} \textit{Id.} art. 25 (emphasis added).
  \item \textsuperscript{168} \textit{Id.} art. 59.
  \item \textsuperscript{169} Sajó, \textit{supra} note 71, § 76(2).
  \item \textsuperscript{170} Ministry of Environmental Protection and Regional Policy, \textit{supra} note 93, art. 29(1).
\end{itemize}
CONCLUSION

In just three years since the fall of Hungarian Communism, the new democratic government has proven itself to be deserving of cautious praise for its environmental reform initiatives. The government first gathered statistical information and removed political barriers to non-governmental studies which confirmed the poor quality of Hungarian water sources. Then, against a backdrop of an inexperienced judiciary, a complicated administrative structure, and a weak economy, Hungary managed to produce two impressive environmental law drafts. Both require the government to take on the bulk of the responsibility for improving environmental conditions in Hungary. Either version would travel far in the direction of cleaning up Hungary's polluted environment.