

ERA Workshop for Judges:

National Judges and the EU Aarhus Acquis

Case study on the role of a judge when dealing with files on
access to justice in environmental matters - preliminary ruling

"A Heatball is a Heatball is a Heatball!"



Dr Matthias Keller,
Presiding Judge, Administrative Court Aachen



1. Will the action of Dr. No have success?

Well, it depends on the admissibility and the merits of the claim.

Do you see any problem as to the admissibility of the claim ?

Art 19 TEU: The national judge is an EU-judge!

What about the merits?



Common sense test: Heating device or light bulb?

Aachen Administrative Court:

It functions like a light bulb,
It looks like a light bulb
and therefore it is light bulb.



2. Can Dr. No invoke the national Constitution? If not, what about fundamental rights?

The established case-law of the Court
answers in the negative:

(*Simmenthal*, 106/77, para. 21 and 24)

“(...) a national court which is called upon, within the exercise of its jurisdiction, to apply rules of EU law is under a duty to give full effect to those rules, **if necessary refusing of its own motion to apply any conflicting provision of national legislation**, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provision by legislative or other constitutional means ...”



„Simmenthal“ without words ...



3. Setting aside EU law by the national Judge?

Can the national Court set aside the
Regulation on household lamps (244/2009/EC)

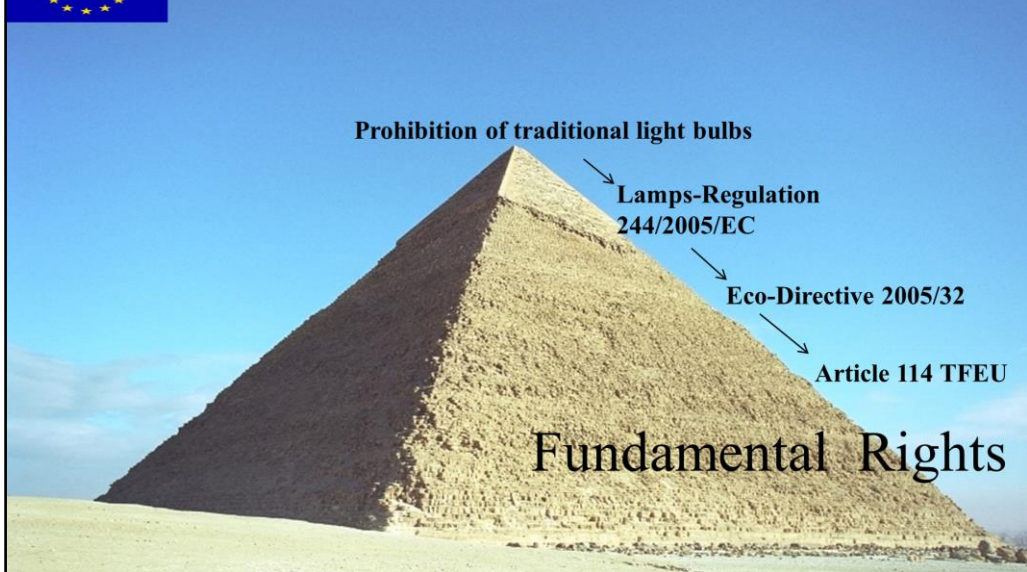
if - let us assume this scenario - it turns out
that the mercury problem was not at all
considered when establishing the Regulation?



„ The Pyramid of Legal Basis“



„All acts must be legal in form and substance“



Cascade of the “pure“ legal order

Administrative act

Minor legal basis

Applicable?

Procedure?

Substance?

Higher legal basis

Applicable?

Procedure?

Substance?

Fundamental Norm / Rights?



Here, the Ecodesign Directive could lack a
proper legal basis...

“The correct the choice of a **legal basis** for a measure must be
based on objective factors, in particular,

the aim and content

of the measure.” (C-155/91)



Article 114 TFEU = proper legal basis Ecodesign Directive?

The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee,
adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States
which have as their object (...)
functioning of the internal market.

However, it is a measure to reduce carbon dioxide (= GHG) emissions in a significant way ... (environment)



EU Commission:

“The disparities between the laws or administrative measures adopted by the Member States in relation to the ecodesign of energy-related products can create barriers to trade and distort competition in the Community and may thus have a direct impact on the establishment and functioning of the internal market.”

This view is widely accepted.

However, if it does not convince the national court, a question on the validity could be ...



Preliminary reference on the validity of the Ecodesign-Directive 2005/32:

The national Court stops its legal proceedings and asks the Court of Justice under Art. 267 TFEU the following question:

Is the Ecodesign-Directive 2005/32 valid?

Reasons: The national Court has to decide a case on the ban of light bulbs („Heatball case“). Therefore, it is relevant for the court to know whether the Ecodesign-Directive 2005/32 (being a basis for the Lamps-Regulation 244/2005/EC and the challenged decision) is valid. Doubts arise because the **Ecodesign-Directive** on Art. 114 TFEU (approximation of laws) and not on Art. 192 TFEU (environment).



Art. 267 TFEU

Legal Basis is Article 267 TFEU:

The Court of Justice of the European Union shall have jurisdiction to give MS Courts **preliminary rulings** concerning:

- (a) the **interpretation** of the Treaties
- (b) the **validity** and interpretation of (EU) acts



Recommendations

Official Journal 2016/C 439/01 and Website of the CJEU:

**“Recommendations
to national courts and tribunals,
in relation to the initiation of preliminary ruling proceedings”
from 25 November 2016**

Footnote:

The above recommendations are comprehensive.

A request should be made only after these recommendations have been read by the national judges.



Have the parties to be heard ?

Recommendations (OJ 2016/C 439/01) para 13:

„In the interest of proper administration of justice,
it may also be desirable for the reference to be made
only after both sides have been heard.“



Content and Form of the Request

(cf. the recommendations OJ 2016/C 439/01)

The referring court and the parties to the main proceedings.

The subject matter of the dispute in the main proceedings and the relevant facts.

The relevant legal provisions.

The grounds for the reference.

The questions referred for a preliminary ruling.

Possible need for specific treatment (anonymity).

Form that facilitates electronic processing:

- white, unlined, A4-size paper.
- commonly used font (Times New Roman, Courier or Arial).
- 12 point in the body of the text and at least 10 point in any footnote.
- all pages of the request, and the paragraphs, should be numbered.

The request should be sent by registered post together with the file the case in the main proceedings to:

Registry of the Court of Justice, Rue du Fort Niedergrünwald,
2925 Luxembourg, LUXEMBOURG

Last but not least: “10” seems to be a very good number of pages of the request.



Thank you
for your kind attention!

