

Case Study: "Ferry Tales"



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The Potamus is a river in Euroland and attracts many tourists. It is formed in South-Town by the confluence of the rivers Pota and Mus and reaches 50 kilometers further north the city of Mid-Town. Another 50 kilometers it empties at North-Town into the Sea.

The legislator of Euroland transposed the Water Framework Directive. Furthermore, the Euroland Water Authority has established a River Basin Management Plan (RBMP) and a Programme of Measures (PoM) for avoiding deterioration of water quality and enhancing it.

Interestingly enough, the Water Law of Euroland provides a clear national definition of the legal term “deterioration” of water quality. The national legislator followed the so called “status classes theory” which is the approach taken by the French legislator in Article 212 -13 Code de l’Environnement and by some German scholars. Thus, Article 4 of the Water Law of Euroland defines:

“In Euroland deterioration of the status of a surface water body means a detrimental change of the water class, for example from ‘good’ to ‘moderate’.

River Boat Limited, a business company, wanted to intensify its existing ferry service (see picture above) and use much bigger boats which only will be possible if the river Potamus is deepened. As a consequence the discharge of pollution into the river will increase.

River Boat Limited filed an application for a permit that allows the dredging and deepening (1,10 m) of the river Potamus at the three docks in South-Town, Mid-Town and North-Town. In the course of the administrative procedure the following became clear: The river Potamus is already in the water class “moderate” because one of the quality elements within the meaning of Annex V of the Water Framework Directive, is already within the category “moderate”. The project of deepening the river and the additional pollution will be detrimental to another quality element. As a result, two quality elements will be in the category “moderate”. However, the river Potamus will stay within the status class “moderate”.

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Legal problems occurred: The competent Water Authority became deeply confused when it realized that the Court of Justice in its "Weser-Judgment" from 1 July 2015 (C 461/13) held that there is a deterioration of the status as soon as at least one of the quality elements falls by one class.

Scenario 1:

After one year of total administrative silence River Boat Limited brought an action to the competent Administrative Court, relying on the national water law and demanding:

1. in a speedy case: the Court may end the "administrative silence" by granting interim relief.
2. in a main case: order that the Water Authority issues the requested permit.

Scenario 2:

The Water Authority granted the requested permit to River Boat Limited. Now it was the environmental NGO Clear Water that brought an action to the Administrative Court, relying on the Water Framework Directive and demanding:

1. in a speedy case: the Court may stop the deepening works/pollution by granting interim relief.
2. in a main case: the Court may set aside the permit for deepening the river to avoid pollution.

Questions

Scenario 1: Will the claim of River Boat Limited be successful?

1. What about the application for interim relief (speedy case)?
2. Is the action admissible without any administrative act?
3. Given that the action is admissible, will River Boat Limited win?

Scenario 2: Will the claim of the NGO Clear Water be successful?

1. What about the application for interim relief (speedy case)?
2. Is the NGO claim admissible?
3. Given that the action is admissible, will the NGO Clear Water win?

Please feel free to give your colleagues an input on your respective domestic laws and jurisprudence.

I am looking forward to our discussion!