

Training module under project “Co-operation with national judges in the field of environmental law under the European Commission Framework Contract ENV.A.I/FRA/2012/0018” on

HOW TO HANDLE COURT PROCEEDINGS INVOKING NON-COMPLIANCE WITH EU WATER LAW

05 – 07 April 2017, Warsaw (Poland)

ANSWERS

1. Some considerations on the hydro-power case

- Whether NGOs have standing will be discussed in the pending cases C-663/15 and C-664/15. However, there are some indications in C-243/15 – Lesoochranarske Zoskupenje VLK that NGOs could be able to invoke the infringement of directly applicable EU environmental law.
- As regards the standing of the holders of fishing rights C-529/15 – Folk will address this issue from the perspective of the Environmental Liability Directive; see the Opinion of AG Bobek. I would argue that such right holders should be able to invoke the infringement of directly applicable EU environmental law if the effects of the claimed infringement affect the enjoyment of their rights.
- There are no explicit rules on the assessment of projects that can affect water bodies. Annex VII no. 2 only requires a “a summary of significant pressures and impact of human activity on the status” to be part of the RBMP. More specific requirements may result from the EIA Directive (2011/92/EU) or the SEA Directive (2001/42/EC) if they apply.
- However, I would argue that MS must respect the right to good administration if they implement the EU WFD. Therefore, they must carefully and impartially examine all the relevant aspects of the individual case and giving a detailed statement of reasons for the decision. Therefore at least some assessment should be undertaken. Of course, such an assessment can be refuted by better evidence.
- It is not obvious that this project as such would need to be mentioned in the RBMP. However, if the authority needs to rely on Art. 4(7) it must be integrated into the RBMP and the conditions need to be addressed.

2. Some considerations on golf and sheep

- The CJEU has recognised that MS enjoy discretion in imposing water pricing (C-525/12).
- A request to be excluded from water pricing runs counter to the objective of Article 9 of the WFD and to the polluter-pays principle.
- Therefore, it is unlikely the privileges of agriculture will require that water should be free for golf courses or domestic use.
- However, MS are bound by general principles of EU law when they implement Art. 9 of the WFD. Therefore a distinction between comparable situations requires justification. It is questionable whether the privilege for the golf course of D.T. can be justified. However, the consequences of a finding that other golf courses were discriminated against are not obvious: Should the privilege be extended, thereby weakening the application of Article 9? Or would it be sufficient to impose water pricing on D.T. for the future?