

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)

Case Study: "Ferry Tales"



Source: www.bilderbuch-koeln.de

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 an approach that was 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. Therefore, 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 will be detrimental to another quality element. As a

Author: Dr Matthias Keller, Administrative Court Aachen

result, two quality elements will be in the category “moderate”. However, the river Potamus will stay within the status class “moderate”.

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 in the sense of the Water Framework Directive as soon as at least one of the quality elements falls by one class. As a consequence, the Water Authority denied the requested permit on the grounds of the “Weser-Judgment”.

River Boat Limited brought an action against the denial to the competent Administrative Court, relying on the national water law and demanding that the court may order that the Water Authority is obliged to issue the requested permit.

Then the Administrative Court of Euroland became deeply confused and asked itself how to assess “deterioration” in the present case. Should that be done under Art. 4 of the Water Law of Euroland or under Art. 4 of the EU Water Framework Directive. Judge H. Potter, the youngest in the panel, explained: According to the “Delena Wells Judgment” of the CJEU neighbours (as third parties) may invoke EU-Directives directly if the challenged permit does not comply with EU requirements (e.g. failed environmental impact assessment). Judge Methuslah, not the youngest anymore, was not convinced and retorted: “Dear colleague Potter, this is not a neighbourhood case at all!”

Scenario:

Can we help the administrative judges of Euroland to answer their legal question by suggesting them to make a request for a preliminary ruling to the Court of Justice in Luxemburg?

A. Getting prepared:

1. Can you provide them with the legal basis for the preliminary ruling proceedings?
2. Where can they find the practical information for the making of the preliminary reference?
3. Any procedural advice from your own legal system? (Should the parties be heard?)

B. Getting involved with a difficult legal problem:

Which question is to be asked within the preliminary ruling procedure? (Just give it a try!)

C. Getting the work done:

The form and content of the request for a preliminary ruling? (Structure? style? How many pages?)

Please feel free to give your colleagues an input on your professional experience, domestic laws and jurisprudence.

I am looking forward to our discussion!