

CASE STUDY ON THE EU ENVIRONMENTAL PRINCIPLES

INTRODUCTION TO EU ENVIRONMENTAL LAW

Focus on the role of national judges and prosecutors (10 May 2021 - online workshop)

On 22 October 2020, the competent Lower Environmental Protection Agency was informed that waste was being illegally incinerated on land belonging to AGROTOP company situated in Upper Valley (municipality in the imaginary Member State).

AGROTOP stated that it had leased the land to a natural person on 15 June 2020. However, it appeared that that person had died on 1 September 2020. The Agency decided to impose on AGROTOP as the owner of the land a fine of EUR 60.000.

According to the national law, persons who own or are in possession of the property at the material time are to be held jointly and severally liable, except where the owner can prove beyond reasonable doubt that it cannot be held responsible. Given that the lessee of the land had died, the Agency maintained that it was fully entitled to hold AGROTOP responsible.



Now AGROTOP disputes that decision before the court and argues it cannot be held liable since there was no causal link established. It argues that the national law is not in line with the EU law.

Article 4(5) of the Environmental Liability Directive (ELD),¹ which covers the environmental damage in this case, states that the ELD *'shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators'*.

Article 11(2) of ELD states: *'The duty to establish which operator has caused the damage or the imminent threat of damage, to assess the significance of the damage and to determine which remedial measures should be taken with reference to Annex II shall rest with the competent authority.'*

¹ Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56).

The Agency emphasizes that the Member State is allowed to adopt more stringent provisions in relation to the prevention and remedying of environmental damage according to Article 16 of the ELD.

Even if there was a causal link, AGROTOP argues that the fine is higher than the actual damage and therefore disproportionate.

QUESTIONS:

1) Is there any principle of EU environmental law applicable?

Where would you find it (them), and how would you use it (them)?

2) Would you answer question 1) differently if the environmental damage did not fall under EU law (ELD)?

3) Do you think that the national law is in line with EU law?

4) Do you find the fine proportionate?

Do you think that the polluter pays principle allows the fine to be higher than the actual pollution, and the “payment” to be punitive?