



Le juge administratif et le droit communautaire de l'environnement

National administrative courts And Community Environmental law

Chypre-Cyprus

**Réponse au
questionnaire
Answer to
The questionnaire**

SEMINAR FOR COUNCILS OF STATE AND SUPREME ADMINISTRATIVE JURISDICTIONS

28 JANUARY 2008, BRUSSELS

QUESTIONNAIRE

1. Information and public participation in environmental issues

Secondary Community law makes provision for procedures to inform the public of environmental data and for citizen participation in the development of projects that are likely to impact the environment.

The two main texts in force are Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC; and Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment as later amended.

Other international texts, such as the Aarhus Convention of 25 June 1998 or Article 8 of the European Convention for the protection of Human Rights and Fundamental Freedoms also apply and the European Court of Human Rights ruled, on the basis of these texts, that member states had an obligation to provide information on environmental matters.

A - Application of regulations

QUESTION

Has the respective application scope of these texts and the Community directives in particular, led to disputes? How has national case law clarified the

concepts contained in these texts considering, in particular, the case law of the Court of Justice of the European Communities?

For example, has the establishment of the party to be consulted, as provided for under Directive 85/337 and referred to as the "public concerned", ever been the subject of litigation? If so, how did your court settle the matter? Do you feel that the explanations provided on this matter by Directive 2003/35/EC, which modified the previous directive, such as the concepts of the public "likely to be affected" by a project or "having an interest in" a procedure to authorise a given project, clarify the scope of the text?

Answer

The respective application scope of the above Community directives have not up the time of writing led to disputes before our national courts and therefore there is no clear indication as to how our national courts will approach the respective application scope of their texts taking into consideration the relevant case law of the Court of Justice of the European Communities

Directive 2003/4/EC on public access to environmental information was due to be implemented in the Member States by February 14, 2005.

It has been incorporated into our legal system through the enactment of law 119(I)/2004 in 30.4.2004 which replaces and repeals the Law 125(I)2000

B - Judge control techniques

QUESTION

How much control does the administrative judge exercise over the administration's compliance with its obligations to inform citizens and facilitate public participation? In other words, how much discretion does it allow the administration in this regard? And what sanctions are issued when the judge observes that one of the obligations not been met?

The consultations provided for under Directive 85/337/EEC may take place during long and complex procedures before official permits are issued. Does failure to comply with obligations systematically lead to the simple annulment of the permit? Or does case law show that annulment is reserved for cases where the irregularities observed are substantial? Is it possible to make the entire or part of the procedure compliant?

Answer

No cases have been brought so far before our national courts concerning the issues being addressed in this question.

However as a general rule when an administrative decision infringes a national law or regulation or was issued without giving due consideration to applicable legal preconditions, it will on a recourse under Article 146 be declared null and void.

Therefore permits which are issued (or refused) in violation of environmental laws and regulations will be annulled by the Supreme Court exercising its administrative jurisdiction.

The application for annulment may assert lack of competence, infringement of an essential procedural requirement, substantive violation of the law, contravention of our Constitution, excess or abuse of discretionary power by an administrative organ.

The legality therefore of the acts or omissions of any organ, authority or person exercising any executive or administrative authority can be reviewed. and they are either annulled (in part or wholly) or confirmed.

In the case of *Yioula Cyprus Ltd. v. The Republic of Cyprus through the Minister Of Agriculture, Natural Resources and Environment (case no. 454/05 dated 20/6/06)* the applicants applied for a permit to operate non-dangerous waste for recycling purposes (recycling of glass) under the provisions of the Solid and Dangerous Waste Law of 2002. Their application was refused by a national authority for the reason that they had not acquired a town planning permit for the industrial plant where the operation of recycling would take place. They filed a recourse against that refusal and the Supreme Court held that the application was rightly and legally denied by the administration.

Our Constitution has been recently amended (by law *127(I)12006*) giving superiority to the European Law. It provides, in essence, that no provision of the Constitution invalidates laws enacted, acts done or measures adopted by the Republic which are necessitated by the obligations of membership of the European union, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the Republic.

European Union Law confers rights and obligations not only on European union institutions and member states but also on citizens and therefore it is possible for citizens to take actions concerning breaches of European union law before national courts.

It has to be noted here that the Pollution of Waters Control Law of 2002 (N. 106(1) of 2002). The Solid and Dangerous Waste Law of 2002 (N. 215(1) of 2002) and The Law on the Control of the Atmospheric Pollution of 2002 (N. 187(1) of 2002) were enacted or amended for the purpose of bringing our legislation in conformity with the various Directives issued by the Council of the European union on matters relating to the pollution of the environment. The underlying objective of the said Laws is the prevention and control of integrated pollution either by preventing completely or at least by minimizing the discharge of dangerous substances into water, soil or in atmosphere.

Since Cyprus's membership of the *European Union*, national courts could therefore refuse to apply legislation that contravenes EU Law. When the national judge draws the conclusion that a legislative provision infringes EU Law, this would entail the annulment or invalidation of particular act or decision stemming from such legislation.

When an administrative measure has been held to be null and void, the administration is under an obligation to reconsider the matter in the light of the judgment of the Supreme Court and reach a new decision. This new decision itself can be the subject of judicial review on recourse before the Supreme Court. BY analogy this applies where a decision of the administration is contrary to Community Law.

According to Article 146.6 a person who succeeded in annulling an administrative act or decision, if his claim has not been met to his satisfaction by the organ, authority or person concerned, shall be entitled to institute legal proceedings in a District court for the recovery of just and equitable damages or such other just and equitable remedy as such court is empowered to grant.

The Supreme Court in its Revisional Jurisdiction has no power to punish for contempt for non compliance with its decisions (*Republic v. Thalassinos (1991) 3 C.L.R. 203 and Vyronas v. Republic (1999) 3 C.L.R. 77*).

C - Open question

QUESTION

In addition to the two previous questions, has your court issued other decisions on waste law or polluting installations law that should be noted? If yes, please summarise these decisions in a few lines.

Answer

Regarding case law on waste law or polluting installations law that should be noted is the case of *Attorney General v. Rainbow Bleaching and Dyeing Company Limited (2002) 2 C.L.R. 65*. A company and its director pleaded guilty to a charge that they had discharged liquid waste from their factory to a locality near a residential area. The court at first instance imposed a fine of £1.000 and £1.500 on the director and the company respectively. On an appeal by the Attorney General who considered the sentence imposed as manifestly inadequate, the Court of Appeal, in addition to the fine imposed ordered the suspension of the works of the factory for as long as they were being conducted without a permit. Another case worth mentioning is that of *Papaefstathiou v. Police (2004) 2 C.L.R. 39* where the District Court sent to prison a 67 years old person (Director of his own company) for a month, for the reason that he acted contrary to Section 6 of the Pollution of Waters Control Law of 2002 when discharging liquid waste, from his poultry farm, to a locality near a residential area. The Court of Appeal ordered that the imprisonment be suspended and a fine of 1000 to be imposed instead on the company.

2. Pollution law (example of polluting installations)

Secondary Community law on waste and polluting installations represents an attempt to reconcile economic growth with environmental protection.

The two main texts in force in this regard are framework Directive 2006/12/EC of the European Parliament and the Council of 5 April 2006 on waste (which replaces Directive 75/442/EEC) and Directive 96/61/EC of the Council of 24 September 1996 concerning integrated pollution prevention and control.

A - Application of regulations

QUESTION

How are responsibilities distributed under your national legislation in connection with the restoration of polluted sites? Does the selection of the party responsible (operators of sites or holders of waste) raise problems? Moreover, is it possible, in certain cases, to question the responsibilities of the public authorities in charge of applying the regulation in the event that they have not sufficiently exercised their powers to monitor and control industrial manufacturers?

Directive 96/61, for example, makes provision for the satisfactory rehabilitation of an operating site once operating activities have been completed. Problems can arise when the relevant public authority intends to exercise its supervision and control powers to end pollution that emerges after operating activities have ended. For example, can these powers be exercised immediately? Against which party: the former operator, the current owner? Can the responsibility of the relevant authority be applied due to a shortcoming in the exercise of its prerogatives?

ANSWER

Directive 96/61 has been incorporated into our legal system through the enactment of the **Law on the Management of Solid and Dangerous Waste of 2002** (Law

215(I)/02) and **Law on the Prevention and Control of Pollution Caused to the Environment by Several Industrial and Other Activities of 2003** (Law 56(I)/03).

According to Law 56(I)/03 the Minister of Agriculture, Natural Resources and Environment together with the minister of Labour and Social Insurance are the competent authorities responsible, for granting a permit for installation for industrial purposes. : The ministers in the exercise of their powers, must ensure among others that:

- a. Operators of installations take preventive measures against pollution, in particular applying Best Available Techniques,*
- b.No “significant pollution” is caused,*
- c.Waste that cannot be avoided is recovered or safely disposed of,*
- d.Energy is used efficiently,*
- e.Accidents are prevented and their consequences are limited,*
- f.The site is returned to a satisfactory state when the installation closes.***

Furthermore According to the 215/02 Law the Minister of Agriculture, Natural Resources and Environment in cooperation with the Minister of Interior are responsible for organizing, authorizing and supervising waste disposal. According to this Law the Council of Ministers may enact secondary legislation by which to set a plan for the technical specification for waste disposal. This plan may provide for the criteria and specification of the measures to be taken to, in order to bring the site of operation to a satisfactory state that is, when the installation ceases to operate (article 8)

According to the same Law the Minister of Agriculture or the Minister of Interior are responsible for organizing, authorizing and supervising waste disposal. Waste is to be disposed of according to a permit system, and permits may impose restrictions or conditions on the methods with which the waste is to be disposed.

There are no problems on the selection of the party responsible for restoring the polluted sites since our law provides that the *polluter pays* principle will be applied (Article 16). What is certain is that the Court will order the person who caused or continues to cause the polluting operation to terminate it and take any additional measures to remove any waste or polluting remains.

Against the actions of the competent authorities, in the event of not having sufficiently exercised their powers to monitor and control industrial manufactures, lies a recourse to the Supreme Court based on Article 146 of our Constitution (set out below)

B - Judge control techniques

QUESTION

What is the scope of the powers of a judge ruling on a dispute concerning the application of one or other of these regulations? Are there procedural regulations or rules of evidence before the judge or procedures for establishing specific facts connected with these matters, given, in particular, their specific technical nature?

When asked, for example, to rule on the decision taken by the relevant authority on the request for prior authorisation provided for under Directive 96/61, is the judge only permitted to annul the decision? Or may the judge also amend the decision or impose other measures?

What rules for the transfer and taking of evidence does the judge apply to settle the dispute? Can the judge request special investigation measures (e.g. expert opinions or amici curiae)?

ANSWER

Article 146 of the Constitution is the principal provision creating competence in administrative law. Under this Article the Supreme Constitutional Court (now the supreme Court) “*shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, act or omission of any organ, authority, or*

person exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person”.

The jurisdiction of the Supreme Court as the only administrative court covers the whole area of executive and administrative action in the public sphere, to the exclusion of matters falling within the domain of private law. The legality of the acts or omissions of any organ, authority or person exercising any executive or administrative authority is reviewed and, they are either annulled (in part or wholly) or confirmed.

The Supreme Court cannot go into the merits of the decision under review and resolve the matter with a decision, on the substance, of its own. The jurisdiction is limited to reviewing the legality of the act or decision.

In the exercise of its revisional jurisdiction, the Supreme Court follows the inquisitorial system. Therefore it reviews the administrative acts or decisions even where the advocate appearing for the authority that took the decision does not support same. The Court has the power and responsibility to regulate the procedure and the production of evidence in order to fulfill its functions under Article 146. The rules of evidence are more relaxed than in civil or criminal cases. The court has this power under Article 135 of the Constitution.

Under Rule 11 of the Supreme Constitutional Rules of 1962, the Court has power to summon any person to give evidence or produce documents for the purpose of enabling the court to come to a just decision in the case.

C - Open question

QUESTION

In addition to the two previous questions, has your court issued other decisions on waste law or polluting installations law that should be noted? If yes, please summarise these decisions in a few lines.

ANSWER

We have not yet had any decisions on waste law except the cases referred to above.

Note

The above questionnaire was prepared by Hon Justice Michael Fotiou assisted by Mrs Maria Kyriacou and Mrs Natassa Papanicolaou, Legal Assistants at the Supreme Court of Cyprus.