



**Le juge administratif
et
le droit communautaire
de l'environnement**

**National administrative courts
And
Community
Environmental law**

Malte-Malta

**Réponse
au questionnaire
Answer to
The questionnaire**

1. 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? So far, there have been no disputes regarding this matter.
2. 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? No.
3. 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 of “having an interest in” a procedure to authorize a given project clarify the scope of the text? Yes most definitely.
4. 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 has 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 the annulment is reserved for cases where the irregularities observed are substantial? Is it possible to make the entire or part of the procedure compliant? Parties can institute proceedings before the First Hall of the Civil Court requesting a judge to review an administrative decision. The Court can, if the administrative act in question is ultra vires because the public authority in question has failed to observe the mandatory procedural requirements of performing the administrative act or its prior deliberations thereon, or if the administrative act is otherwise contrary to law, enquire into – the validity of such administrative act or declare it null, invalid or without effect. Plaintiff can include in the demands a request for the payment of damages. Provision has only been made in the law for the Judge to annul the official permit.
5. In addition to the two previous questions, has our court issued other decisions or waste law or polluting installations law that should be noted? If yes, please summarise these decisions in a few lines. No.
6. How are responsibilities distributed under your national legislations in connection with the restoration of polluted sites? The Operator / Holder of the site is responsible.
7. Does the selection of the party responsible (operators of sites or holders of waste) raise problems? No.
8. 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 manufactures? Yes, the regulator is MEPA and it has kept overall responsibility. In each case the regulator enters into a contract with the operator holding him ultimately responsible whether the operator is public or private.
9. 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? Yes.

10. Against which party: the former operator, the current owner? In our case against the government.
11. Can the responsibility of the relevant authority be applied due to a shortcoming in the exercise of its prerogatives? Yes the public can sue.
12. 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 these 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? Normal procedures would apply.
13. 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? The Judge would only be permitted to annul the decision and, if asked, to order the payment of damages to plaintiff.
14. 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)? Normal procedural rules. The Judge will have the evidence himself but would normally appoint a technical expert who would accede on the site, hear also some evidence himself and draw up a report to the Court which report would include his considerations and conclusions.
15. 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. No.