

Author: Dr Christoph Sobotta

**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)**

1. Hydro-power in the mountains

The competent authority A authorises the construction of a small hydro-power plant on a virgin mountain stream. Against this decision an environmental NGO and the holder of fishing rights on the stream below the plant introduce actions in your court.

The plaintiffs argue:

- The assessment of the environmental impacts was insufficient; in particular the effect on fish was not examined.
- According to their expert who relied on the most recent studies the project would strongly affect the number and diversity of fish downstream from the plant. Under the system of the WFD the at least one water quality element would be deteriorated from high to a lower level.
- Mitigation measures that would significantly reduce the impacts have neither been imposed on the operator nor even been examined.
- The project was not mentioned in the applicable river basin management plan.

The authority argues:

- Under the applicable procedural law of the Member State in question neither NGOs nor the holders of fishing rights do have standing to bring such cases.
- There had been an oral assessment of the effects on fish by an official responsible for the administration of fishing rights. In his opinion, based on many years of experience in this position, no significant effects were to be expected. The same expert advised that mitigation measures would be a waste of money. [If you consider that it would have made a difference, please assume that this assessment had submitted in writing.]
- Even if there were significant effects, the project would be justified because of overriding public interest in renewable energy.
- The project is too small to be integrated into the river basin management plan.

Please address all arguments even if you arrive at the conclusion that the plaintiffs do not have standing to bring their action.

Author: Dr Christoph Sobotta

**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)**

2. Golf and Sheep

In the lovely Valley of A there is a river, some towns, agriculture and recently some golf courses have been created. Traditionally, agriculture can use groundwater and river water for free. In contrast, the inhabitants of the towns are obliged to buy all the water they use, including for gardening, from the local water provider. A similar regime applies to most of the golf the courses. Even if they operate their own pumps they must meter water abstraction and pay the corresponding duties to the local water authority.

However, the most recent golf course, a development of international entrepreneur D.T., has made a special arrangement with the authorities. This golf course is considered an agricultural terrain because they keep a flock of five sheep. Therefore, they don't have to pay for their water.

Several inhabitants of the towns and the other golf courses, that need to pay for their water, bring an action against the water authorities to be allowed to use water for free, just as agriculture and the golf course of D.T. They all claim that the current rules on water pricing infringe Art. 9 of the WFD and, moreover, discriminate against them. One of the golf courses argues that it should enjoy the same treatment as the golf course of D.T. because they have acquired some sheep as well.

The water authorities argue that domestic water use in the towns, including gardening, cannot be compared to agriculture. Agriculture is an important economic activity that depends on access to water. Moreover, the traditional free access to water is equivalent to an acquired right. The same considerations apply to the comparison between golf courses and agriculture.

As regards the special treatment of the golf course of D.T., the water authority relies on a contract that had been concluded between the authority and D.T. before the golf course was established. As other golf courses did not conclude similar contracts they could not expect similar treatment. According to the authority the grazing of sheep on a golf course could not lead to another outcome because it was obvious that this activity in no way affected the main purpose of the area, namely the operation of the golf course.