



Le juge administratif et le droit communautaire de l'environnement

National administrative courts And Community Environmental law

Grèce-Greece

Réponse au questionnaire Answer to The questionnaire

SEMINAR FOR COUNCILS OF STATE AND SUPREME ADMINISTRATIVE JURISDICTIONS

I.A. Has the respective application scope of these texts 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?

Council Directive 85/337 is mentioned in quite a large number of decisions. However the scope of its application hasn't led to many disputes, as the legal texts that implemented the Directive into Greek law were directly applied in most cases.

With decisions 613/2002 and 3478/2000 the Court ruled, invoking *inter alia* Directive 85/337, that in the case of administrative acts issued at the end of an environmental impact procedure the administrative judge has the power to investigate whether this procedure observed both procedural and substantive requirements. More specifically, according to these decisions, the judge examines, while reviewing administrative action, a) if the environmental impact assessment, as the basic tool for applying the principle of prevention, corresponds to the requirements established by the law and b) if its content is sufficient, for the competent authority to determine and evaluate the risks and the effects of the project in question and conclude whether the expected benefit from the completion of the project is proportionate to the imminent damage to the natural environment. However, according to the Court, the judicial review of an administrative act following an environmental impact assessment doesn't empower the judge to directly evaluate the effects of a certain project and determine whether its completion constitutes a breach of the

sustainability principle, because such an evaluation requires the establishment of facts, the investigation of technical issues and substantive inquiries. A breach of the sustainability principle can only be concluded directly by the judge in the case that the evidence contained in the administrative file and evaluated by the judge on the basis of the principle of common sense, demonstrates that the damage caused to the environment by the project is irreparable or manifestly disproportionate to the expected benefit.

Decision 3266/2005 deals with the matter whether repetition of the public participation procedure is necessary when an environmental impact assessment is revised according to proposals put forward in the course of the previous participation procedure. The Court ruled that such a repetition is not necessary.

In decision 1567/2005 the Court, invoking decisions WWW (C-435/97) and Linster (C-287/98) of the ECJ, states that even statutory provisions giving consent to construction projects falling under the scope of Directive 85/337 have to be the result of a scientific study, which assesses the effects of the planned project on the environment and proposes alternative solutions. Furthermore, according to the Court, the legislature, before granting development consent, has to conduct a participation procedure involving the public and the public authorities, just like the administration is obliged to do in the usual case.

In compliance with Article 9 of Directive 85/337, Greek law provides that the development consent to a project must be published in the local press and on the bulletin board of the prefecture by the prefectural council. In decisions 2759/1994, 4498/1998 and 2310/2000, the Court ruled that

omission of this publication does not affect the legality of the consent, since the publication follows the completion of the development permit as an administrative act and does not constitute an essential stage of the procedure.

The establishment of the party to be consulted, as provided for under Directive 85/337 and referred to as the «public concerned» has never been the subject of litigation, as in practice every inhabitant of the wider area of the project is accepted to the procedure. On the other hand, the establishment of the standing in the Greek administrative court procedure law requires only the existence of a “legal interest” of the applicant, which is in turn very widely interpreted in the Court’s case law. Taking part in the preceding public participation procedure is not requirement for standing to challenge the grant of a development consent.

B. How much control does the administrative judge exercise over the administration’s compliance with its obligations to inform citizens and facilitate 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?

Failure to comply with obligations in relation to the participation procedure leads to the annulment of the permit. According to the law, procedural irregularities lead to annulment only if they are substantial, that is when they are likely to affect the outcome in the substance of the case. However, the Court’s case law tends to consider almost all procedural irregularities as substantial.

II. A. 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 that require permits 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?

To date there are no general provisions regarding the restoration of polluted sites. There are, however, regulations in specific areas of the environmental law (hazardous waste, quarries etc.) providing for the obligation of the operator of a site to restore the polluted environment of the site. In most cases, the restoration of the site is provided for as a condition of granting the permit. The public authorities who issued the permit are also responsible for supervising the execution of the environmental protection clauses imposed with the permit. If they omit to do that, any person with a legal interest in the execution of the environmental conditions can challenge this omission before the Council of State.

B. 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 procedures for establishing specific facts connected with these matters, given, in particular, their specific technical nature?

In the case of permits (or omissions to issue a permit) challenged before the Council of State, the Court can only annul the administrative decision

and not amend it or impose other measures. The rules for the transfer and taking of evidence are those applied to the regular judicial review procedure, that is, the main source of evidence stems from public documents, while the Court can order the production of expert opinion and the applicant can provide on his/her own initiative written observations on technical issues prepared by an expert. Such written observations can point out inconsistencies of the factual and legal basis of the challenged permit, which can lead to its annulment.

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