

Leena Luhtanen
Minister of Justice
(Kirsti Rissanen
Permanent Secretary)

15.9.2006

Impact of Natura 2000 on Environmental Licensing
EUFJE Annual Conference: 15 and 16 September 2006 in Helsinki, Finland

Ladies and gentlemen, it gives me great pleasure to welcome you to this conference of the European Union Forum of Judges for the Environment. Although established only in 2004, the Forum's annual conferences have already addressed a number of issues involving the content, application and development of environmental instruments in the EU, such as the Aarhus Convention and European waste law. Internationalisation in society is undeniably reflected also in the work of the courts today. To an increasing degree, supranational or international legal norms are either applied directly by the courts or taken into consideration when applying national law.

An awareness of case law of the courts in other States has become a topical issue particularly within the European Union.

The significance and importance of environmental protection in the European Union has increased since the signing of the Amsterdam Treaty. Environmental policy is one of the focal areas of ongoing development through multi-year programmes at the EU level and also one that has ripple effects in several other EU spheres of activity such as agriculture, regional development and transport. Environmental norms are most commonly issued by virtue of Article 175 of the Treaty establishing the European Community, which may also be characterised as the legal basis for environmental policy within the EU. In the sector of environmental law, the EU seeks to harmonise the level and range of tools of environmental protection in Member States. Accordingly, the prime legal instrument is the directive.

An ambitious goal of the European Union in terms of the environment is to foster the preservation of European biodiversity by conserving areas of high importance for threatened species and habitats. Under the most recent environmental programme, a particular goal is to halt biodiversity decline within the European Union by 2010. The Natura 2000 network of nature protection areas, the very topic of this conference, was created with this goal in mind. Provisions on the Natura network are included in the Finnish Nature Conservation Act. Natura sites in Finland have been selected in keeping with the European Union's Habitats Directive and Birds Directive in a bid to safeguard the species and habitats determined therein.

Finland determined its national list of proposed Natura 2000 Special Protection Areas by Government decision on 20 August 1998. Under the Nature Conservation Act, the Government decision could be appealed to the Supreme Administrative Court. In this context we might well remember the manner in which the Supreme Administrative Court met a special challenge at the turn of the millennium, when the regional network was being established in Finland. Altogether more than 1,500 appeals totalling over 40,000 pages of text were lodged against the Government decision. Cases involving the Natura network constitute the largest single group of cases in the history of the Supreme Administrative Court. Nonetheless, the cases were resolved within reasonable time. Although ultimately the appeals were grouped into a total of 694 decisions according to Natura site, each appeal was given individual consideration.

The safeguarding of Natura 2000 sites in practice calls for the regulation of land use decisions likely to impair the natural values for which the site was originally included in the Natura 2000 network. This “impairment ban system” is directly linked to the permit procedures and procedures of plan approval and ratification appearing in various land use acts. Implementation of the ban is monitored by the authorities issuing permits and approving and ratifying plans. Judges sitting environmental cases, when dealing with appeal processes involving land use permits and land use plans, may thus also in future expect to address matters relating to the Natura 2000 network. Such matters may involve not only important questions of natural values but major financial considerations as well.

Although legal provisions on environmental protection have largely been harmonised in EU Member States, the criminal sanctions arising from offences against these provisions vary from one Member State to another. Violation of environmental protection norms is not comprehensively subject to punishment. Finnish environmental legislation may be described as quite modern and comprehensive, yet even in Finland there is a need to expand the criminal liability of legal persons. In a variety of contexts, Member States have underscored the importance of the development of legislative provisions and cooperation within the European Union to prevent and clear up environmental offences and enforce criminal liability.

The legal basis for the regulation of environmental offences and the associated questions of competence have proven to be problematic within the EU, however. There has been longstanding uncertainty as to whether criminal norms relating to environmental law may be issued as first-pillar instruments, i.e. directives within the European Community’s scope of competence, or whether they always come within the scope of the cooperation carried out between Member States within Pillar III and can thus only be implemented by framework decision lacking direct legal effect.

The judgment of the Court of Justice of the European Communities in case number C-176/03 has recently provided guidance as to the competence to legislate criminal sanctions. The case concerned a petition by the Commission to have annulled the Council Framework Decision on the protection of the environment through criminal law. The Commission deemed this matter to fall within the scope of the Community competencies. The said framework decision was indeed annulled by the Court’s judgment of 13 September 2005. The Court stated that as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community’s competence. However, the Court also emphasised that the Community may take measures which relate to the criminal law of the Member States which it considers necessary in order to ensure the rules it lays down on environmental protection are fully effective. The criminal sanctions thus provided for shall be deemed essential for combating serious environmental offences.

In a subsequent Communication, the Commission has interpreted the scope of application of the judgment to extend to all Community policies entailing binding regulation and requiring criminal sanctions to ensure their effectiveness. The matter has been discussed in the Justice and Home Affairs Council this past spring and Member States have been fairly unanimous in their view that the Commission has adopted an excessively broad interpretation of the impacts of the judgment. Clarification of this interpretation may be expected when the Court of Justice of the European Communities issues its decision in the case concerning annulment of the framework decision on ship-source pollution. Even before then, the Council will address proposals by the Commission that include provisions on criminal sanctions. The proposal for a directive on criminal measures aimed at enforcing intellectual property rights is one of the matters pending.

Environmental regulation guides measures impacting on the status of our ultimately limited finite natural environment. The effects of such regulation are not restricted only to the present day but

rather exert a key influence on the living conditions of generations to come. Supranational influence is also an inherent component of environmental law, as actions impacting on the state of the environment seldom honour national boundaries. Cross-border legal information flows and comparative law based upon such information flows facilitate the work of judges in their application of the law. As a supranational network, the Forum of Judges for the Environment holds a key position in ensuring awareness among European judges of environmental norms with wide-ranging social implications while also promoting uniformity in environmental case law.