

QUESTIONNAIRE

(Answers from PORTUGAL -administrative jurisdiction)

Question 1:

1.a)

To review scientific matters, judges can get scientific advice from experts, who can be appointed by the parties and the court (it can be only one expert, appointed by the court or by parties in accordance, or by three experts, each party appoints one and the court appoints the third. Expertise is one of the possible means of proof that can be requested and presented to the judge, and its assessment is free (the conclusions are not mandatory in the judgment);

1.b)

By expert evidence;

1.c)

Yes, when an error of judgment is invoked, higher courts can review the first instance decision (concerning the assessment of the facts or the law);

1.d)

I would consider it as a document and would submit it to the contradictory.

Question 2:

2.a)

Sometimes it is difficult but the point is the distinction between facts and law;

2.b)

No;

2.c)

Judges are not allowed to investigate ex officio, except concerning instrumental facts (not the essentials, these shall be invoked by the parties) and if they do it, it is mandatory to present it at the parties, in order to assure the contradictory.

Question 3

3.a)

On environmental cases, experts can be appointed by parties or by the court, according to the requisite training (sometimes, we ask the universities or professional orders to indicate experts);

3.b)

When there are reasons to suspect of their impartiality or requisite training. On that case, parties can ask the court to remove the expert and appoint another;

3.c)

When it is requested by the parties, parties are invited to indicate the facts in controversy and ask concrete questions; the same procedure is followed when expertise evidence is determinate by the court. The final questions are always enounced by the judge.

Question 4

4.a)

In administrative cases there are no specific rules on environmental cases concerning the standard of proof;

4. b)

There are no specific rules.

Question 5

5.a)

Between two competing or conflicting pieces of expert evidence, judges are free to decide and evaluate the evidence, considering the whole evidence that is presented in the case;

5. b)

Yes.

5.c)

When the court is reviewing scientific assessments of domestic authorities, judges can scrutinize 'manifest errors', or the reasonableness/consistency/coherence of their scientific conclusions as well as the observation of fundamental principles by domestic authorities.

Question 6

6.a)

Every scientific fact-finding is a defining challenge, as judges are not scientifically prepared to understand some issues in discussion. Concerning environmental adjudication, there are specific difficulties because sometimes, even the parties who present the case are not sufficiently familiar to the scientific problems/issues;

6.b)

I think it is sufficient to control the activity of domestic authorities;

6.c)

Yes;

6.d)

I think it would be better if judges were specialized in environmental cases; In Portugal, an administrative judge is not yet specialized and we have to deal with every administrative issues.

Case study

A)

In Portugal, on water issues, the law (article 3º/1/f) of the *water law – Lei nº 58/2005 de 29.12*) establishes that “**measures to avoid the negative impact of an action on the environment should be adopted, even in the absence of scientific certainty that there is a cause-effect relationship between them**”.

It is the precautionary principle directly applicable on water issues.

So in this case, Court would invalidate the administrative permission.