

Craeynest and Others v. the Brussels Region

CJEU C-723/17, 29 June 2019

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COOPERATION BETWEEN
CJEU AND NATIONAL JUDGES
IN ENVIRONMENTAL CASES



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1/ Parties, court, issue and timeline

- ❖ Citizens and an ENGO >< the Brussels Region
- ❖ The Brussels Court of first instance (1 judge chamber)
- ❖ Air quality
 - ❖ Not environmental impact assessment, waste
- ❖ 15 December 2017 – 29 January 2021
 - ❖ 15 December 2017: judgment + preliminary ruling request
 - ❖ 29 June 2019: CJEU – preliminary ruling
 - ❖ 29 January 2021: follow-up judgement

2/ Background

- ❖ Air pollution
- ❖ 28 April 2016 – European Commission > Belgium
 - ❖ Brussels Region
 - ❖ Lack of compliance with Directive 2008/50/EC of 21 May 2008 “*on ambient air quality and cleaner air for Europe*” (‘AQD’) – obligations
 - ❖ The location of sampling points
 - ❖ The annual limit value for nitrogen dioxide (NO₂)
 - ❖ A remedial air quality plan
- ❖ 2 June 2016: Craeynest et al. > Brussels Region
- ❖ 21 September 2016: Craeynest et al. > court (summons)

3/ The law

- ❖ Art. 1382 Old Civil Code (Napoleon, 1804) – extra-contractual liability for faults that caused harm to someone else

- ❖ Art. 7.1 j° Annex III.B.1(a) AQD and Art.7.4 AQD
 - ❖ *“The location of sampling points for the measurement .. shall be determined using the criteria listed in Annex III”*
 - ❖ Annex III. B.1(a) – *“Sampling points directed at the protection of human health shall be sited in such a way as to provide data on the following (...) The areas within zones and agglomerations **where the highest concentrations occur** to which the population is likely to be directly or indirectly exposed for a period which is significant in relation to the average period of the limit value(s), (...)”*
 - ❖ Art. 7.4 AQD: the application of the criteria *“shall be monitored by the Commission”*

- ❖ Art. 13.1 and Art. 23.1 AQD
 - ❖ *Obligation to comply with limit values*
 - ❖ *Obligation to establish an air quality plan when the levels of pollutants exceed any limit or target value*

4/ The preliminary questions

*“29. In those circumstances, the *Nederlandstalige rechtbank van eerste aanleg Brussel* (Dutch-language Court of First Instance, Brussels) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:*

*‘(1) Should Article 4(3) and the second subparagraph of Article 19(1) [TEU], read in conjunction with the third paragraph of Article 288 [TFEU], and Articles 6 and 7 of Directive [2008/50] be interpreted as meaning that, **when it is alleged that a Member State has not sited the sampling points in a zone in accordance with the criteria** set out in paragraph 1(a) of Section B of Annex III to Directive 2008/50, **it is for the national courts**, on application by individuals who are directly affected by the exceedance of the limit values referred to in Article 13(1) of that directive, **to examine** whether the sampling points were established in accordance with those criteria **and, if they were not, to take all necessary measures** in respect of the national authority, **such as an order**, with a view to ensuring that the sampling points are sited in accordance with those criteria?’*

*(2) **Is a limit value** within the meaning of Article 13(1) and Article 23(1) of Directive [2008/50] **exceeded** in the case where an exceedance of a limit value with an averaging period of one calendar year, as laid down in Annex XI to that directive, has been established on the basis of the measurement **results from one single sampling point** within the meaning of Article 7 of that directive, or does such an exceedance occur only when this becomes apparent from the average of the measurement results from **all sampling points** in a particular zone within the meaning of Directive 2008/50?’”*

5/ The CJEU's answers

“69. (...)”

On those grounds, the Court (First Chamber) hereby rules:

1. *Article 4(3) TEU and the second subparagraph of Article 19(1) TEU, read in conjunction with the third paragraph of Article 288 TFEU, and Articles 6 and 7 of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe must be interpreted as meaning that **it is for a national court**, hearing an application submitted for that purpose by individuals directly affected by the exceedance of the limit values referred to in Article 13(1) of that directive, **to verify** whether the sampling points located in a particular zone have been established in accordance with the criteria laid down in paragraph 1(a) of Section B of Annex III to the directive **and, if they were not**, to take **all necessary measures** in respect of the competent national authority, **such as**, if provided for by national law, **an order**, with a view to ensuring that those sampling points are sited in accordance with those criteria.”*

“69.

On those grounds, the Court (First Chamber) hereby rules:

(...)

*2. Article 13(1) and Article 23(1) of Directive 2008/50 must be interpreted as meaning that, in order to establish whether a limit value with an averaging period of one calendar year, as laid down in Annex XI to that directive, has been exceeded, **it is sufficient** that a pollution level higher than that value be measured at **a single sampling point.**”*

6/ The follow-up judgement (29 January 2021)

➤ An injunction

- to locate sampling points along the ‘Kleine Ring’, the Wetstraat and/or the E40 between the Reyers Avenue and the frontier with the Flemish Region

 - Traffic black spots, many kilometers long >< not a single sampling point

- Within 6 months

- Under penalty payment of 300 EUR/day delay

➤ “Compliance with the NO₂ limit values in 2019 and 2020”

- No obligation to make and implement a remedial air quality plan

7/ Some observations and comments

❖ The first instance judge

- ❖ At ease with the EU environmental law at stake, case-law included
- ❖ Deft handling of the CJEU preliminary ruling procedure
- ❖ Straight questions met by straight answers
- ❖ Follow-up ruling in line with the answers
 - ❖ No issue with the separation of powers, as the injunction met “***the only way to put an end to the illegal situation***” (no discretion)

❖ Implementation of the judgment?

❖ Strategic litigation in environmental law

- ❖ “*the practice of bringing lawsuits intended to effect societal change. Impact litigation cases may be class action lawsuits or individual claims with broader significance, and may rely on statutory arguments or on constitutional claims.*”

Thank you. Any questions?

