EUFJE annual conference 2021: The cooperation between national judges and the Court of Justice of the European Union in environmental matters

Questionnaire

Introduction

Judicial cooperation between national judges and the Court of Justice of the European Union (hereafter CJEU or the Court) is essential for effective environmental protection. In this questionnaire we focus mostly on the functioning of the preliminary reference procedure with regard to national courts decisions once the CJEU has answered the question(s) posed in a preliminary ruling, so-called "follow-up judgments". The purpose of this questionnaire is to improve the mapping of follow-up judgments in environmental matters and to understand the underlying reasons, therefore building upon the work presented by Squintani and Kalisvaat recently published in the journal European Papers (link).

After a few introductory questions on the general level of knowledge of the functioning of the preliminary reference procedure, the questionnaire will focus on follow-up judgements in particular.

A) Questions on general knowledge about functioning of preliminary reference procedure

1. How do you consider the knowledge that judges in your country have about the preliminary rulings procedures?
   In general, the judges in my country have complex knowledges about preliminary ruling procedure and they apply this procedure in cases law pending, regarding the specific litigation in which the national legislation does not comply with the european one.

2. Have you benefited from training courses either at national level or within the programme offered by DG Environment or ERA (Academy of European Law) about CJEU environmental case law and preliminary rulings? What is your estimation of the level of knowledge and specialisation of judges in (European) environmental law?
   I have benefited form training courses and so a lot of my judges colleagues (the ones who have been interested in environmental area). The training courses was also at national level, organised by National Institute of Magistracy in continuous training programme for magistrates and at European level organised by DG Environment, ERA or EJTN.
   I estimate a low level of specialization and knowledge of judges in environmental law, because the trainings are not compulsory for the magistrates who deals with such cases (only if they are interested in).

3. Does your country have statistics showing in which subject-areas of EU environmental law are the majority of preliminary rulings requests? (If possible, please provide the link to such statistics.)
   There is a national statistic who include a data base of all preliminary ruling addressed by romanian courts. The statistic also refer to the specific areas of law, such as environmental law. This data base is coordinated by the National network of judges coordinators in the field of European Union law.
   The link: http://euroquod.ro/dokuwiki/doku.php?id=despre_euroquod

   Could you provide a short explanation for the fact that one or more areas of EU environmental law generate more preliminary questions then others? Does this have to do with the quality / clarity of the legislation or a specific focus on individual areas due to national peculiarities?
   The most preliminary rulings were generated by the pollution tax legislation. This tax has various names over time and it was regulated by several normative acts. However, the Romanian magistrates almost unanimously appreciate that the car tax, regardless of the name and form adopted since 2007, is, in fact, a kind of "disguised customs tax". In this way, all the intentions of the Romanian legislator to impose a tax on cars, such as the environmental tax, were declared illegal and contrary to the TFEU by the national courts because they do not respect the property right and the community legislation. CJEU ruled in the cases regarding the pollution taxes imposed on cars in Romania, through the following decisions: C-402/09, C-263/10, C-565/11, C-97/13, C-214/13, C-331/13, C-586/14.
   Romanian version link about the CJEU preliminary ruling regarding the pollution tax: http://euroquod.ro/dokuwiki/doku.php?id=taxa_auto

4. Does the judiciary in your country engage in the practice of interpreting EU environmental law without asking for a preliminary ruling? (Does this practice concerns also courts of last instance?)
   No, the romanian judiciary avoid to interprete any european legislation without asking for a preliminary question. There are specific cases in which first instances agree to pronounce judgments without consulting the CJEU, but in the last instances is compulsory to ask a preliminary question when is about the interpretation of EU legislation(of course when the legal conditions are fullfiled).

5. Does you country have a system to control whether national courts request preliminary references? (If yes, please include a link to the system).
   Yes. A database maintained by the National network of judges coordinators in the field of European Union law.The network brings together, on a voluntary basis, judges from all levels of jurisdiction, who show a special interest in the application of EU law, are eager to gain new knowledge and are willing to share their experience to other colleagues.
   The link: http://www.euroquod.ro/ue/cereri/evidenta/

6. Which are the fundamental/procedural rights of citizens to ask a national court to request a preliminary reference to the CJEU?
   According to romanian procedural rules, the citizens are able to request a preliminary reference to the CJEU. Although, the parties before the referring court do not have a formal right of referral, they may have the initiative to make a request, having the right to refer questions to the court or to suggest a legal issue. The decision of the court by which it decides to refer the matter to the Court or to reject a request for reference is not open to challenge.

B) Questions on examples of follow-up judgments after CJEU preliminary rulings in environmental matters in the last 10 years (2011-2021)

7. Have you judged in (a) environmental case(s) in which you received an answer to a preliminary question that ***you*** had posed to the Court (i.e. in a "follow-up case")? If yes, could you provide the link to the judgment(s) or a copy thereof?
   No.

8. Did you sit in other environmental follow-up cases? If yes, could you provide the link to the follow-up judgment(s) or a copy thereof?
   Yes. The CJEU provide a decision in case C-402/09 Tatu vs Romania in which establish that: "Article 110 TFEU must be interpreted as precluding a Member State from introducing a pollution tax levied on motor vehicles on their first registration in that Member State if that tax is arranged in such a way that it discourages the placing in circulation in that Member State of second-hand vehicles purchased in other Member States without discouraging the purchase of second-hand vehicles of the same age and condition on the domestic market."
   My judgement implemented this decision in the sens of declaring void the administrative act who impose the pollution tax. (I attach a copy – Dec. Civ. 9004/04.12.2014 Bucharest Court of Apeal – appendix 1)

9. Are you familiar with environmental follow-up cases in your ***country*** other than those in which you were sitting as a judge? If yes, could you provide the link to (some of) the judgments or a copy thereof?
   Yes, I provide the links:
   https://www.curteadeapelcluj.ro/wp-content/uploads/2020/01/c828-19.pdf
   http://euroquod.ro/dokuwiki/doku.php?id=taxa_auto
   https://www.jurisprudenta.com/jurisprudenta/speta-1554f4u7/

C) Questions on the answers provided by the Court of Justice

10. Did the Court of Justice consider the question(s) ***admissible*** and did the Court ***answer*** it/them?

Yes, in many cases, such as: C 402/09; C 263/10; C 438/10; C 573/10; C 29/11; C 30/11; C 565/11; C 97/13; C 214/13; C 33/13; C 69/14; C 76/14; C 585-588/14 C 73/15; C 234/15; C 104/17; C 88/19.

11. Did the Court of Justice ***rephrase*** the question(s) posed? If yes, do you consider the rephrased question(s) a ***proper*** representation of the question(s) originally asked?
I am not aware of any environmental case in which CJEU rephrase the question(s).

12. Do you consider the answer given by the Court of Justice to be a legally correct answer to the question posed?
Yes, I consider that the answers provided by CJEU solved the question of union law who had been refered.

13. Did the Court of Justice formulate the answer by setting out ***criteria*** to be applied by the national court or did the Court of Justice provide a binary answer, e.g. an unconditional ***affirmative/negative*** answer?
Both variants are applicable:
Ex 1: In the Case C-104/17 the Court provide a specific answer to the question "Article 15 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste and the 'polluter-pays' principle which it implements do not preclude national legislation, such as that at issue in the main proceedings, which imposes a contribution on an economic operator which does not make any alteration to the packaging which it places on the market, calculated on the basis of the difference in weight between, on the one hand, the quantity of packaging waste corresponding to the minimum targets for energy recovery and recovery by recycling and the quantity of packaging waste actually recovered or recycled."
https://curia.europa.eu/juris/document/document.jsf?text=&docid=200268&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=14100392
Ex. 2: In the Case C 88/19 the Court set out definitions and concepts to be applied by the national court: " Article 12 (1) (a) of Council Directive 92/43 / EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, should be interpreted as meaning that the capture and transport of a specimen of an animal species protected under Annex IV to this Directive, such as the wolf, on the outskirts of an area of human settlements or in such an area, are prohibited under that provision. Article 16 (1) of that directive must be interpreted as meaning that any form of deliberate capture of specimens of that animal species in the above circumstances is prohibited in the absence of a derogation granted by the competent national authority under that provision. It is therefore for the national court to determine the conditions under which the specimen of the protected animal species at issue in the main proceedings was tranquilized and transported and to what extent that operation constitutes a "deliberate capture" within the meaning of Article 12 (1) (a) of the Habitats Directive"

https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:62019CJ0088&from=RO

14. Did the answer given by the Court of Justice ***enable*** to solve the national case and did the answer make it ***clear*** how it had to be applied? Please provide a short explanation for your answer.
1.Yes, in both examples underlined above, the national court could solve the case by implement the principles arinsing from the CJEU decision.
In the first case, the Court decide that the administrative act who impose the package tax is valid. This Court established that the binding nature of the interpretative decision given by the Luxembourg Court is imposed on domestic courts which cannot proceed to an interpretation other than that provided by the supranational court.(dec. civ.1175/17.05.2018 Pitești Court of Appel – appendix 2)
2.In the second case, the court statue that, wherever is a protected animal, the prohibition of capturing it is aply, which invalidate the prosecutor solution. (înch. penala nr. 123/29.09.2020 Zărnești Local Court – appendix 3)
So, the CJEU decisions were clear enough to be implemented by the national courts.

D) Questions on the follow-up case

15. Was it ***possible*** for the national court to render a judgment after it received the answer from the Court of Justice, or did (new) elements arise that complicated this, *such as* the withdrawal of the case, the need for further clarifications from the national Constitutional Court or the Court of Justice, constitutional or factual barriers, or the political sensitivity of the subject matter?
Yes, this kind of new elements who comes to complicate the case arise very often, but not in environmental cases. Romania has a few preliminary question in this area of law, so the practice is not very broad and comprehensive.

16. Do you consider the follow-up judgment a case of ***cooperative*** or ***uncooperative*** administration of justice? With cooperative administration we refer to a follow-up judgment that complies with the contents of the answer received from the Court of Justice. When this is not (fully) the case we refer to uncooperative administration of justice.
I consider the follow-up judgement a case of cooperative administration of justice

17. Do you (still) ***agree*** with the manner in which the follow-up judgment applied the preliminary ruling?
It depends on a specifics of each case.

E) Questions on the environmental law background of the disputes

18. Did the national environmental legal framework applicable to the follow-up judgment represented a **one-on-one transposition** of the EU law framework at stake? If no, in which manner (a brief explanation will suffice)? Please provide a link to the relevant regulatory framework.

1. Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste: Article 3, point 11, of Directive 94/62 provides: For the purposes of this directive: …(11) "economic operators" in relation to packaging shall mean suppliers of packaging materials, packaging producers and converters, fillers and users, importers, traders and distributors, authorities and statutory organisations. Article 15 of that directive provides: "Acting on the basis of the relevant provisions of the Treaty, the Council adopts economic instruments to promote the implementation of the objectives set by this directive. In the absence of such measures, the Member States may, in accordance with the principles governing Community environmental policy, inter alia the polluter-pays principle, and the obligations arising out of the Treaty, adopt measures to implement those objectives."

Romanian law: Governmental Decision No 621/2005 on the management of packaging and packaging waste (now is replaced by the Law no. 24/2015): " '(1) Economic operators which are Romanian legal persons shall be responsible for all the waste produced by the packaging which they place on the national market, as follows: (a) economic operators who place packaged products on the market shall be responsible for waste generated by primary, secondary and tertiary packaging used in the packaging of their products, with the exception of retail packaging used for packaging at the point of sale of the products which they place on the national market; (b) economic actors who over-package individually packed products for resale or for redistribution shall be responsible for the waste generated by the secondary and tertiary packaging which they place on the market; (c) economic operators who place retail packaging on the market shall be responsible for the waste resulting from such packaging." Article 9(1)(d): "a contribution of 2 [Romanian lei (RON)]/kg, payable by economic operators who place packaged products on the national market, who distribute retail packaging on the national market for the first time, and by economic operators who rent out, in the course of a profession, packaging in any form, for the difference between, on the one hand, the quantities of packaging waste corresponding to the minimum targets for recovery or incineration at waste incineration plants with energy recovery and of recovery by recycling provided for in Annex 3 and, on the other, the quantities of packaging waste actually recovered or incinerated at waste incineration plants with energy recovery and recovered by recycling."

Decree No 578/2006 adopting the method for the calculation of the contributions and taxes owed to the Environmental Fund: "The placing of a product on the national market consists in the act of making a product available on the national market, for the first time, for consideration or free of charge, for the purposes of distribution and/or use, including personal use/consumption. …"

https://lege5.ro/App/Document/q4ydmmrx/hotararea-nr-621-2005-privind-gestionarea-ambalajelor-si-a-deseurilor-de-ambalaje

2. Council Directive 92/43/CEE on the conservation of natural habitats and of wild fauna and flora: Article 12: "1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting: (a) all forms of deliberate capture or killing of specimens of these species in the wild; (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; (c) deliberate destruction or taking of eggs from the wild; (d) deterioration or destruction of breeding sites or resting places. 2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented. 3. The prohibition referred to in paragraph 1 (a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies. 4. Member States shall establish a system to monitor the incidential capture and killing of the animal species listed in Annex IV (a). In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned."

Romanian law: Governmental Decision No 57/2007 on the regime of protected natural areas, conservation of natural habitats, wild flora and fauna: Article 33. - (1) For terrestrial, aquatic and underground wild plant and animal species, provided in annexes no. 4A and 4B, with the exception of bird species, which live both in and outside protected natural areas, are prohibited: a) any form of harvesting, capturing, killing, destroying or damaging the specimens found in their natural environment, in any of the stages of their biological cycle; b) intentional disturbance during the period of reproduction, growth, hibernation and migration; c) intentional damage, destruction and / or collection of nests and / or eggs from the wild; d) damage and / or destruction of breeding or resting places; e) harvesting flowers and fruits, collecting, cutting, uprooting or intentionally destroying these plants in their natural habitats, in any of the stages of their biological cycle; f) holding, transporting, selling or exchanging for any purpose, as well as offering for exchange or sale specimens taken from the wild, at any stage of their biological cycle.

https://lege5.ro/App/Document/geydqobuge/ordonanta-de-urgenta-nr-57-2007-privind-regimul-ariilor-naturale-protejate-conservarea-habitatelor-naturale-a-florei-si-faunei-salbatice

19. In your subjective opinion, do you consider that environmental law in your country has its own ***identity*** or do you see it as a mere representation/implementation? of EU environmental law? A mixture of the two is possible, of course.

    In my personal opinion environmental law in my country represent a non-compliant transposition of european legislation who does not take into account the realities and particularities of our environmental problems.

20. Is there any ***remedy/monitoring*** in case the judges do not ask the CJEU (ruling as last instance) or on how they follow up on preliminary rulings of CJEU (possibly also in other cases, not only in their own, since clarifications given by CJEU are valid in all similar cases)? Could you provide a link to any such regime, if present?
    Law no. 554/2004 on administrative disputes provide a remedy in article 21: "It is a reason for revision, in addition to those provided for in the Code of Civil Procedure, to give final judgments in violation of the principle of the priority of European Union law."
    https://lege5.ro/App/Document/qu3dsojy/legea-contenciosului-administrativ-nr-554-2004

F) Case

Consider the following situation and provide an answer about how it would be solved in your country. When doing so please provide reference to the normative framework relevant for answering the question.

Article 13 of Directive 2008/50 sets limit values for nitrogen dioxide ($NO_{2)}$ which must be respected throughout the territory of the Member States. In case the limit values are not respected to an extent that exceeds the margin of tolerance set out under the Directive, Article 23 of the Directive requires that Member States set up an Air Quality Plan ensuring that exceedances are ended in the shortest time possible.

Assume that in an agglomeration in your country the limit values are trespassed and that scientific evidence shows that this is due to the emissions coming from Euro 0-4 diesel vehicles. The cumulative level of NO_2 from all other sources of NO_2 in the agglomeration does not lead to an exceedance of the EU limit values. The authorities competent for adopting the plan under Article 23 of the Directive, as transposed into national law, announce the adoption of a series of restrictions to the use of diesel vehicles in the agglomeration. However, at the same time, an already existing ´low emission zone´ prohibiting the use of whichever vehicle in the centre of the agglomeration is withdrawn on request of a diesel vehicles auto club (so-called "withdrawal decision"). The use of diesel vehicles in this zone surely leads to a further worsening of air quality in the agglomeration on the short term. The restrictions to the use of Euro 0-4 diesel vehicles in the Air Quality Plan are estimated to bring about compliance with the limit values in one year from the moment of adoption of the restrictions.

An environmental non-governmental organization starts proceedings against the withdrawal decision of the competent authority.

The national court hearing the case has doubts about whether the adoption of restrictions to the use of Euro 0-4 diesel vehicles in the Air Quality Plan is enough to ensure compliance with the Directive or whether Article 13 of the Directive requires the annulment of the withdrawal decision. It therefore poses, among others, the following question to the Court of Justice of the European Union:

> *3. To what extent (if at all) are the obligations of a Member State which has failed to comply with Article 13 of Directive 2008/50 affected by Article 23 (in particular its second paragraph)?*

The Court of Justice answers this question in the following manner:

> ***The third question***
>
> *36 By its third question, the referring court asks, in essence, whether, where it is apparent that conformity with the limit values for nitrogen dioxide established in Annex XI to Directive 2008/50 cannot be achieved in a given zone or agglomeration of a Member State by 1 January 2010, the date specified in that annex, and that Member State has not applied for postponement of that deadline under Article 22(1) of Directive 2008/50, the fact that an air quality plan which complies with the second subparagraph*

of Article 23(1) of the directive has been drawn up permits the view to be taken that that Member State has nevertheless met its obligations under Article 13 of the directive.

37 At the outset, it should be recalled that the second subparagraph of Article 23(1) of Directive 2008/50 specifies that it applies when the limit values for pollutants are exceeded after the deadline laid down for attainment of those limit values.

38 In addition, as regards nitrogen dioxide, application of that provision is not made conditional on the Member State having previously attempted to obtain postponement of the deadline under Article 22(1) of Directive 2008/50.

39 Consequently, the second subparagraph of Article 23(1) of Directive 2008/50 also applies in circumstances such as those arising in the main proceedings, in which conformity with the limit values for nitrogen dioxide established in Annex XI to the directive is not achieved by 1 January 2010, the date specified in that annex, in zones or agglomerations of a Member State and that Member State has not applied for postponement of that date under Article 22(1) of the directive.

40 It follows, next, from the second subparagraph of Article 23(1) of Directive 2008/50 that where the limit values for nitrogen dioxide are exceeded after the deadline laid down for their attainment, the Member State concerned is required to establish an air quality plan that meets certain requirements.

41 Thus, that plan must set out appropriate measures so that the period during which the limit values are exceeded can be kept as short as possible and may also include specific measures aimed at protecting sensitive population groups, including children. Furthermore, under the third subparagraph of Article 23(1) of Directive 2008/50, that plan is to incorporate at least the information listed in Section A of Annex XV to the directive, may also include measures pursuant to Article 24 of the directive and must be communicated to the Commission without delay, and no later than two years after the end of the year in which the first breach of the limit values was observed.

42 However, an analysis which proposes that a Member State would, in circumstances such as those in the main proceedings, have entirely satisfied its obligations under the second subparagraph of Article 13(1) of Directive 2008/50 merely because such a plan has been established, cannot be accepted.

43 First, it must be observed that only Article 22(1) of Directive 2008/50 expressly provides for the possibility of a Member State postponing the deadline laid down in Annex XI to the directive for achieving conformity with the limit values for nitrogen dioxide established in that annex.

44 Second, such an analysis would be liable to impair the effectiveness of Articles 13 and 22 of Directive 2008/50 because it would allow a Member State to disregard the deadline imposed by Article 13 under less stringent conditions than those imposed by Article 22.

45 Article 22(1) of Directive 2008/50 requires that the air quality plan contains not only the information that must be provided under Article 23 of the directive, which is listed in Section A of Annex XV thereto, but also the information listed in Section B of Annex XV, concerning the status of implementation of a number of directives and on all air pollution abatement measures that have been considered at the appropriate local, regional or national level for implementation in connection with the attainment of air quality objectives. That plan must, furthermore, demonstrate how conformity with the limit values will be achieved before the new deadline.

46 Finally, this interpretation is also supported by the fact that Articles 22 and 23 of Directive 2008/50 are, in principle, to apply in different situations and are different in scope.

47 Article 22(1) of the directive applies where conformity with the limit values of certain pollutants 'cannot' be achieved by the deadline initially laid down by Directive 2008/50, account being taken, as is clear from recital 16 in the preamble to the directive, of a particularly high level of pollution. Moreover, that provision allows the deadline to be postponed only where the Member State is able to demonstrate that it will be able to comply with the limit values within a further period of a maximum of five years. Article 22(1) has, therefore, only limited temporal scope.

48 By contrast, Article 23(1) of Directive 2008/50 has a more general scope because it applies, without being limited in time, to breaches of any pollutant limit value established by that directive, after the deadline fixed for its application, whether that deadline is fixed by Directive 2008/50 or by the Commission under Article 22(1) of the directive.

49 In the light of the foregoing, the answer to the third question is that, where it is apparent that conformity with the limit values for nitrogen dioxide established in Annex XI to Directive 2008/50 cannot be achieved in a given zone or agglomeration of a Member State by 1 January 2010, the date specified in that annex, and that Member State has not applied for postponement of that deadline under Article 22(1) of Directive 2008/50, the fact that an air quality plan which complies with the second subparagraph of Article 23(1) of the directive has been drawn up does not, in itself, permit the view to be taken that that Member State has nevertheless met its obligations under Article 13 of the directive.

Imagine that you are the judge in the follow-up case that has to apply the answer provided by the Court of Justice. How would you judge about the request of annulment of the withdrawal decision? *Please provide reference to the normative framework relevant for answering the question.*

If I were the judge of the case, I consider admissible the request for annulment the withdrawal decision. It is clear from the CJEU decision that, drawning up an air quality plan which complies with the second subparagraph of Article 23(1), is not enough to conclude that the Member State met its obligations under Article 13 of the directive.

It is also clear from the circumstances of the case that the use of diesel vehicles in the zone (according with the withdrawal decision) surely leads to a further worsening of air quality in the agglomeration on the short term.

So, the withdrawal decision issued by the local authority does not comply with the Air Quality Plan who are estimated to bring about compliance with the limit values in one year from the moment of adoption of the restrictions.

There is also a violation of Article 13 of the directive, implemented in national legislation by Article 26 of Law no. 104/2011 on air quality.

In Romania the 2008/50 Directive has been implemented by the following normative acts:

- *LAW No. 104/2011 of June 15, 2011 on air quality;*
- *GOVENRNMENT DECISION No. 257 of April 15, 2015 on the approval of the methodology for the development of air quality plans, short-term action plans and air quality maintenance plans;*
- *Government Decision no. 806/2016 for the amendment of the annexes no. 4, 5, 6 and 7 of Law no. 104/2011 on air quality.*

Romania was convicted at the CJEU for systematic and persistent non-compliance, from 2007 until at least 2016, of the daily limit values for PM10 concentrations and of the annual limit values for PM10 concentrations in the area RO32101 (Bucharest), Romania:

" Romania, on the one hand, by systematic and persistent non-compliance, from 2007 until at least 2016, of the daily limit values for PM10 concentrations and by systematic and persistent non-compliance, from 2007 to 2014 inclusive, with the exception of 2013, the annual limit values for PM10 concentrations in the RO32101 area (Bucharest, Romania) did not fulfill its obligations under Article 13 (1) 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 in conjunction with Annex XI thereto and, on the other hand, has not - complied with this area since 11 June 2010, obligations under Article 23 (1) of that Directive in conjunction with Annex XV thereto, in particular the obligation laid down in Article 23 (1) the second sub-paragraph of Article 1 of that Directive, in order to ensure that the period for exceeding it is as short as possible." (C-638/18 CJUE, decision of the Court 30th of April, European Commission against Romania)

A few environmental associations filed a lawsuit against the General City Hall of Bucharest regarding its inability to provide clean air for the citizens of the Capital. According to the legislation in force, the Capital City Hall is responsible for preparing and adopting air quality plans for the capital region. The complainants are suing a series of provisions of the Integrated Air Quality Plan (PICA), developed by the City Hall in order to combat air pollution. The lawsuit targets PICA in its content, not just formal requirements. An in-depth analysis by the complainants showed that almost all the measures proposed in the PICA do not comply with the legal requirements to be quantifiable and effective in solving specific problems. They are so evasive that it is impossible to assess their impact. Consequently, the content of the Plan does not reach its objective, and the City Hall must improve the PICA in order to meet the legal requirements provided in Law no. 104/2011 on ambient air quality - transposing Directive 2008/50 / EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe. The applicants further claim that the Annexes to the Directive set the maximum levels for certain pollutants. The limits for PM10 and NO2 came into force in 2005 and 2010,

respectively, but were then consistently exceeded in Romania. Despite this fact, the Romanian Government and local authorities have failed to take adequate measures to protect the health of citizens. Exceedances are recorded in particles (PM10 and PM2.5) and nitrogen dioxide (NO2), both of which are harmful to human health.

The action is pending and is to be solved by the court.

G) Conclusion

In your view, does the preliminary ruling procedure support national judges to achieve uniform application of EU environmental law and does it contribute to effective environmental justice on the ground? If not, which changes should be considered internally or at EU level?

In my personal opinion, the preliminary ruling procedure is an important support for national judges in order to apply and understand the EU environmental legislation.

I sugest that the procedural legislation should provide the opportunity to suspend the case if there is a preliminary ruling and the CJEU answer could influence the pending case, which is similar. (currently there is only a possibility for the judge, by extensive interpreting procedural rules, but not an obligation)

Recently, our Ministry of Justice propose a change of the Statue af Magistrates (Law no. 303/2004), so non-compliance with the CJEU decision could be considered a disciplinary misconduct. (Currently, only non-compliance with Constitutional Court decisions and High Court in revision by interest of law, is considered a disciplinary violation).