Answers to the questionnaire (Republic of Slovenia)

A.)

1. The knowledge of judges in Slovenia regarding preliminary rulings procedures is good. There have been training courses at the national level on the methodology of preparing references for a preliminary ruling before the CJEU.

2. The Slovenian judges have benefited from training courses both at national level as well as within the program offered by ERA about CJEU environmental case law and preliminary rulings. Judges have sufficient knowledge and specialization in European environmental law.

3. To my knowledge there is no such statistics in Slovenia. Questions referred for a preliminary ruling can be found at the following link: http://www.pisrs.si/Pis.web/strokovniClanki as well as in the Jurifast database.

4. The judiciary in Slovenia does not engage in the practice of interpreting EU environmental law without asking for a preliminary ruling (acte claire, acte éclairé and non-relevant questions would be an exception). According to Art. 267 of the TFEU the CJEU has exclusive competence to decide on the interpretation of the Treaties and on the validity and interpretation of EU legal acts. As a rule, national courts have discretion to request preliminary rulings. However, if an issue of EU law is raised before a national court against whose decisions there is no judicial remedy under national law, then it is obliged to request a preliminary ruling. If an issue arises before a national court regarding the validity of EU law, the duty to refer a question for a preliminary ruling, according to the Foto-Frost doctrine, also extends to lower courts.[1] There are certain reasons where a national court of last instance is relieved from its obligation to refer questions for a preliminary ruling to the CJEU (see the criteria in C.I.L.F.I.T., C-283/81).

5. To my knowledge Slovenia does not have a system to control whether national courts request preliminary references (regarding legal remedies see answer 6). The Commission could initiate infringement proceedings under Article 258 TFEU. As the mere breach of the referral duty does not result in the infringement of substantive individual rights, nor in material damage, it is not sufficient in itself to trigger liability for the state (Koebler case). It is however not excluded that the breach of the referral duty be considered as violation of the fair trial principle enshrined under Art. 47 of the Charter. Liability for the state may theoretically incur for violation of this fundamental procedural right.2

6. The parties in a dispute may ask a national court to request a preliminary reference to the CJEU. According to the Slovene Courts Act (like Art. 267 of the TFEU), the court may refer the preliminary issue to the CJEU when a decision depends on the resolution of a preliminary question regarding the interpretation or validity of EU law (first paragraph of Art. 113a). The parties could challenge the court's decision not to refer questions for a preliminary ruling in their appeal (or other legal remedy) against the court's final decision by requesting that this be done by the appellate courts (courts of last instance). According to the second paragraph of Art. 113a the Supreme court or any other court against whose decision there are no legal remedies, shall request a preliminary ruling regarding the interpretation or validity of EU law that influences its decision (see answer 4). If the court of last instance refuses to request a preliminary ruling, the party can file a constitutional complaint alleging that the decision was arbitrary (violation of the fair trial principle, Art. 22 of the Constitution). However, the fact that a constitutional challenge may be brought against the judgments of the Supreme Court does not deprive that latter court of its status as a court against whose decisions there is no judicial remedy.[3]

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[1]VEINGERL, Mateja, 2013, DOLŽNOST POSTAVITI VPRAŠANJE ZA PREDHODNO ODLOČANJE SODIŠČU EU [na spletu]. Univerza v Mariboru, Pravna fakulteta. [5 july 2021]. Available at https://dk.um.si/IzpisGradiva.php?lang=slv&id=43320.

[2]See Varga, Z., Remedies for violation of EU law by Member State courts what place for the Köbler doctrine? (doctoral dissertation), Faculty of Law and Political Sciences, Eötvös Loránd University, Budapest, 2016, p 8.

[3]See opinion of Advocate General Tanchev delivered on 9 February 2017 in the Case C-578/16 PPU (paragraph 33). Regarding the obligation to refer for a preliminary ruling see also C-3/16.

B.)
7. To my knowledge the Slovenian courts have not yet requested any preliminary rulings regarding environmental matters. Only the case C-207/14 could be found in which the referring Supreme court (X Ips 479/2012)4 asked how the notion of 'natural mineral water from one and the same spring', contained in Article 8(2) of Directive 2009/54, is to be interpreted. The purpose of Art. 8 was to ensure that the name of the spring enables consumers to identify the provenance of the water in question and to distinguish it from any other mineral water (see paragraph 33). The case therefore seems more related to consumer protection than environmental protection.
C.)
The CJEU considered the questions admissible and answered the rephrased question which was a proper representation of the questions originally asked. Although it did not formulate a binary (yes/no) answer, the answer was precise and enabled the national court to solve the case. The national court asked how the notion of 'natural mineral water from one and the same spring', contained in Article 8(2) of Directive 2009/54, is to be interpreted. It posed several binary (yes/no questions) describing certain circumstances and asking whether the water in those specific circumstances would be considered as 'natural mineral water from one and the same spring'. The CJEU answered this question by explaining what the notion of 'natural mineral water from one and the same spring' means in general. It determined the criteria that must be met so that the water is considered 'natural mineral water from one and the same spring'. It must be interpreted as referring to a natural mineral water that is drawn from one or more natural or bore exits, and which originates in one and the same underground water table or in one and the same underground deposit, where, at all those natural or bore exits, that water has identical characteristics, pursuant to the criteria specified in Annex I to Directive 2009/54, which remain stable within the limits of natural fluctuation.

D.)
It was possible for the national court to render a judgement after it received the answer from the CJEU. However, the Supreme court had to annul the ruling delivered by the administrative court as well as the decision of the Agriculture Ministry refusing the registration of the water in question as natural mineral water. It recalled that the natural mineral waters are also defined with respect to their composition, the characteristics of the natural mineral water play a decisive role in the identification of this water. However, the facts in this regard were not fully established.
The follow-up judgement was a case of cooperative administration of justice (the national court relied on Art. 113a(6) of the Courts Act that stipulates that a preliminary ruling of the CJEU shall be binding on courts.

E.)
18. Art. 12(4) of the national Rules on natural mineral water, spring water and table water is a transposition of article 8(2) of the Directive 2009/54 ES.5 They both provide that it is prohibited to market natural mineral water from one and the same spring under more than one trade description. The national rules did not contain a definition of the notion of 'natural mineral water from one and the same spring'. The follow-up judgement therefore relied on the criteria set out by the CJEU taking into consideration the water's characteristics, pursuant to the criteria specified in Annex I to Directive 2009/54.
19. The environmental law in Slovenia is largely a transposition of EU law. It did, however, retain some of its own identity in certain limited parts.
20. To my knowledge there is no active monitoring in case the judges do not ask the CJEU for a preliminary ruling nor is there any active monitoring on the follow-up judgements. This matter remains in the hands of the parties. They have the possibility to challenge the decision (of a court of last instance) not to request a preliminary ruling before the Constitutional court if this decision was

[4]Available in slovene at: https://www.sodisce.si/znanje/sodna_praksa/baza_seu/116/
[5]Available in slovene at: http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV5392

arbitrary (for example see the Decision of the Constitutional Court Up-561/15-18).

F.) Case

There has been no (even remotely) similar case in the Slovene jurisprudence. It is therefore not possible to give an answer as to how it would be solved. The legal nature of the "withdrawal decision" is unclear. Under Slovene law an auto club could not request such a withdrawal decision. This would lead to the conclusion that the decision to withdraw the prohibition of use of vehicles in the center is part of the air quality plan which is a general (normative) act. In principle the Administrative Dispute Act does not enable judicial review of legal acts of a general nature. There are no express provisions in the Environmental Protection Act (EPA)[6] nor in the Decree on ambient air quality (Decree) regarding legal remedies against such an act (i.e., air quality plan).

However, pursuant to Art. 40 of EPA impact assessment is carried out within the procedure of drawing up a plan, programme, spatial planning or any other documents (of a general nature), the implementation of which is likely to have a substantial impact on the environment. This would be the legal basis for the environmental assessment of the withdrawal decision (included in the air quality plan) in this case. The general nature of the air quality plan does not preclude it from being classified as 'plans and programmes' within the meaning of Article 2(a) of Directive 2001/42 (see case **C- 24/19,** paragraph 61).

Article 2(a) of Directive 2001/42 defines the 'plans and programmes' as being those which satisfy two cumulative conditions: 1. they are subject to preparation and/or adoption by an authority at national, regional or local level or are prepared by an authority for adoption, through a legislative procedure by parliament or government, and 2. they are required by legislative, regulatory or administrative provisions (see case **C- 24/19**). Both conditions are satisfied in this case. According to Art. 15 of the Decree the air quality plan is adopted by the government - a national authority. The first condition is therefore satisfied. Regarding the second condition the CJEU has held that a measure must be regarded as 'required' where the legal basis of the power to adopt the measure is found in a particular provision, even if the adoption of that measure is not compulsory (paragraph 35 and 52 of case C- 24/19).7 Article 2(a) of Directive 2001/42 includes not only the preparation and adoption of 'plans and programmes', but also modifications to them (paragraph 43 and 57). Modifications of the plan which have significant environmental effects, within the meaning of Article 3(1) of Directive 2001/42, most often arise when an authority decides of its own initiative to carry out such a modification, without being obliged to do so (see paragraph 43) as in this theoretical case. Art. 1 states that the objective of Directive 2001/42 is to subject plans that are likely to have significant environmental effects to an environmental assessment during their preparation and before their adoption (paragraph 46).

According to the case law of the CJEU **(C-404/13)** the 2nd subparagraph of Article 23(1) of Directive 2008/50 imposes a clear obligation on Member States to establish an air quality plan that complies with certain requirements (paragraph 53). Individuals are entitled, as against public bodies, to rely on the provisions of a directive which are unconditional and sufficiently precise. It is for the courts to interpret national law, as far as possible, in a way that is compatible with the purpose of that directive. If this is not possible, they must disapply the rules of national law which are incompatible (paragraph 54). It is incompatible with the binding effect that Article 288 TFEU ascribes to Directive 2008/50 to exclude the possibility of the obligation imposed by that directive being relied on by the persons

[6]Available in slovene at: https://webcache.googleusercontent.com/search?q=cache:2zaYOONdr9YJ:https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Slovenia/environmentprotectionact.pdf+&cd=11&hl=en&ct=clnk&gl=si&client=firefox-b-e

[7]Plans whose adoption is regulated by national legislative or regulatory provisions, which determine the authorities competent to adopt them and the procedure for preparing them, must be regarded as 'required' within the meaning, and for the application, of that directive.

concerned. That consideration applies particularly in respect of a directive whose objective is to control and reduce atmospheric pollution and which is designed, therefore, to protect public health (paragraph 55). Therefore natural or legal persons directly concerned by the limit values being exceeded must be in a position to require the competent authorities, if necessary by bringing an action before the courts having jurisdiction, to establish an air quality plan which complies with the 2nd subparagraph of Article 23(1) of Directive 2008/50, where a Member State has failed to secure compliance with the requirements of the 2nd subparagraph of Article 13(1) of Directive 2008/50 and has not applied for a postponement of the deadline (as provided for by Article 22). The CJEU concluded that where a Member State has failed to comply with the requirements of the 2nd subparagraph of Article 13(1) of Directive 2008/50 and has not applied for a postponement of the deadline it is for the national court having jurisdiction, should a case be brought before it, to take, with regard to the national authority, any necessary measure, such as an order in the appropriate terms, so that the authority establishes the plan required by the directive in accordance with the conditions laid down by the latter (paragraph 58).

In Slovenia, Art. 14 of the EPA grants a general right to judicial protection in environmental matters. It stipulates that citizens may (as individuals or through organization) (in order to exercise the right to a healthy living environment) file a request at court that the person (responsible for an activity affecting the environment): 1. ceases the activity if it causes (or would cause) an excessive environmental burden or presents (or would present) a direct threat to human life or health, or 2. that the person be prohibited from starting the activity if there is a strong probability that the activity would present such a threat. NGOs (that have obtained the status of NGO acting in public interest) can participate in procedures in accordance with the provisions of EPA (Art. 153(2) EPA). If the criteria for the NGO to obtain the status of NGO acting in public interest were too stringent, the judge could rely on Art 9(3) of the Aarhus Convention (read in conjunction with Art. 47 of the Charter of Fundamental Rights of the European Union), according to which Parties to the Convention shall ensure members of the public have access to administrative or judicial procedures to challenge acts and omissions by public authorities which contravene provisions of its national law relating to the environment.[8]

G.)

The preliminary ruling procedure supports national judges to achieve uniform application of EU environmental law and contributes to effective environmental justice. Through the preliminary ruling procedure national judges can overcome possible shortcomings of their national legal system.

[8]Article 9(3) does not have direct effect in EU law. The national courts must however interpret (to the fullest extent possible), the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the rights conferred by EU law, in order to enable an environmental protection organisation, to challenge a decision that could be contrary to EU environmental law (see C-240/09).