EUFJE Questionnaire 2021 – The cooperation between national judges and the Court of Justice of the European Union in environmental matters

Sweden´s answers:

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 reference procedures?*
   As regards judges in courts of first instance (the Land and Environment Courts) the knowledge is on a basic level. The level of knowledge is probably higher among the younger judges for whom EU law has been a natural part of their legal education. In the Land and Environment Court of Appeal – which is the second instance and for most cases the last instance – judges are well informed about the procedure in general. As the procedure is rarely used the experience among judges is however low. Most judges have never turned to the CJEU for a preliminary ruling and would probably feel slightly uncomfortable when doing so. At the highest level – The Supreme Court – the judges must be presumed to have relevant knowledge.

   As mentioned, the procedure is rarely used. During the period 2008-2020 Swedish courts turned to the CJEU for a preliminary ruling in 10 environmental cases.

2. *Have you benefited from training courses either at national level or within the programme offered by DG Environment or ERA 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?*
   Personally I have benefited from training about CJEU environmental case law and preliminary rulings through Stockholm University and through a legal network at European level (NEEL) as well as through ERA. Sweden has specialized environmental courts and thus judges specialized in environmental law. The level of knowledge varies depending on length of experience and background (a number of judges in my court and the Land and Environment Court of Appeal have previous experience of European environmental law from working in the Ministry of Environment). A number of courses arranged by the Court Academy deal with European environmental law and those courses are open to all judges.

3. *Does your country have statistics showing in which subject-areas of EU environmental law are the majority of preliminary rulings requested (link if possible)?*
   Could you provide a short explanation for the fact that one or more areas of EU environmental law generate more preliminary questions than others? Does this have to do with the quality/clarity of the legislation or a specific focus on individual areas due to national peculiarities?
   We do not have any such statistics. When going through the environmental cases which have been referred to CJEU there does not seem to be any particular areas of environmental law that has dominated among questions put to the court.

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 also concern courts of last instance)?*
   EU environmental law is interpreted through studying the relevant regulations/directives and the case law from CJEU (helped by COM guidelines etc.). If this does not lead to a clear answer to the legal question the court will have to ask for a preliminary ruling.

5. *Does your country have a system to control whether national courts request preliminary references? (link if possible).*
   No.

6. *Which are the fundamental/procedural rights of citizens to ask a national court to request a preliminary reference to the CJEU?*
   Anyone concerned (incl. ENGOs) by the case, and thus being regarded as a party, may ask the national court to make such a request.

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

7. *Have you judged in (an) environmental case(s) in which you have received an answer to a preliminary question that you posed to the Court (i.e. in a follow-up case)? (link/copy to judgement if possible).*
   No.

8. *Did you sit in other environmental follow-up cases? (link/copy to judgement if possible).*
   Land and Environment Court of Appeal have some follow-up cases to C-473/19 och C-474/19 *Skydda skogen* (2021) but those cases have not yet reached a final judgement.

9. *Are you familiar with environmental follow-up cases in your country other than those in which you were sitting as a judge? (link/copy to judgement if possible).*

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

10. *Did the Court of Justice consider the questions(s) admissible and did the Court answer them?*
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?*
12. *Do you consider the answer given by the Court of Justice to be a legally correct answer to the question posed?*
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?*
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? Short explanation.*

D) Questions on the follow-up case

15. *Was it possible for the national court to render a judgement 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 Constitutional Court or the Court of Justice, constitutional or factual barriers, or the political sensitivity of the subject matter?*
16. *Do you consider the follow-up judgement a case of cooperative och uncooperative administration of justice? With cooperative administration we refer to a follow-up*

judgement 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.

17. *Do you (still) agree with the manner in which the follow-up judgement applied the preliminary ruling?*

E) Questions on the environmental law background of the disputes

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

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.*
    A very large part of our environmental law has its origin in EU law, so the area is clearly dominated by EU legislation. Based on the fact that there is also national environmental law and that EU law is implemented within our national legal system, we would however say that environmental law in SE has its own identity. But it is to a very large extent a mixture.

20. *Is there any remedy/monitoring in case the judge 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 their own, since clarifications given by CJEU are valid in all similar cases)? (link to any such regime).*
    There is no special remedy or monitoring concerning preliminary rulings nor the follow up of any such ruling. A decision by a lower instance court not to ask the CJEU can be challenged through appeal and might be regarded as a procedural error – if the court of appeal finds that a reference should have been made. A decision not to ask for a preliminary ruling must always be clearly motivated.

F) Case

The judgement could be described shortly as follows: Although Sweden, by setting up an Air Quality plan for the agglomeration in question, meets the obligations under article 13 in the directive, the Swedish Environmental Code requires that the annulment of the withdrawal demand should be rejected. The general rules of consideration in the Environmental Code pledge that one must strive for that all efforts should be made to protect human health and environment - as far as possible. The EU directive 2008/50 on air quality and cleaner air in Europe is a minimum directive and the MS has the possibility to apply stricter limits for air pollution than the directive and as follows also stricter rules for measures to reach the air quality plan for the agglomeration in question. A withdrawal of the prohibition of Euro 0-4 diesel vehicles in the “low emission zone” in the city surely should lead to a further worsening of air quality in the agglomeration on the short term. Considering the facts above the judgement would be a rejection of the withdrawal demand for having the best reasonable possibility to reach the air quality goal in the agglomeration in question.

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?

It is a helpful instrument that, in our opinion, contributes to effectiveness. The awareness and knowledge of the institute of preliminary rulings amongst judges could however improve as quite a few judges would consider it difficult to formulate relevant questions. Judges are also to some extent hesitant to refer a question to CJEU as they feel that asking the court will lead to a serious delay of the case.