

DIVERSION OF THE RIVER

SOC044

Assignment for the class (27. 11.2017)

The following case concerns the interpretation of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1), of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17) ('Directive 85/337'), of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30) and of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).¹

The dispute in the main proceedings concerns a project for the partial diversion of the upper waters of the river A. to river P. ('the project at issue in the main proceedings'). That major project, intended to serve not only the irrigation needs of the region of T. and electricity production but also the supply of water to towns and cities in that region, has long been the subject of litigation.

A number of actions, seeking the annulment of the ministerial decrees approving successive versions of that project, have been brought by environmental organizations, international non-governmental organizations and local authorities concerned.

The environmental parameters in respect of certain individual technical works forming part of that project were initially approved by two decisions of 9 October 1991 and 21 April 1992 of the competent ministers. They concerned a tunnel of 18.5 kilometres channeling the waters of the river A to P. and dams and reservoirs, together with works associated with that project.

Both those ministerial decisions were annulled, by judgments No 2759/1994 and No 760/1994, on the ground that they were not based on a comprehensive study of the environmental impact of the project at issue in the main proceedings. That court held that the diversion of a proportion of the waters of the river A. to the plain of P. constituted a technically complex and large-scale project whose overall effect on the environment of the areas concerned was not confined to the sum of the strictly local consequences of each of

¹ CJEU Case C-43/10, <http://eur-lex.europa.eu>

the works considered in isolation. Consequently, it was not sufficient, in order to measure and assess the consequences of that project, to identify the environmental effects of each of the works taken separately, but it was on the contrary necessary to prepare an overall study in which the various distinct consequences and the subsequent environmental impact of that project would be considered and assessed together, in accordance with an appropriate scientific method.

Following those judgments, a single assessment was drawn up which related to all the works to be carried out as part of the project at issue in the main proceedings. Consequently, by joint decision of 15 December 1995, the competent ministers approved the environmental parameters relating to the partial diversion of the upper waters of the river A. and the construction and operation of the works associated with that diversion, which included, inter alia, hydroelectric power stations. Further, by another ministerial decision, the maximum volume of water which could be diverted was reduced from 1100 million to 600 million cubic metres per annum.

A further action for the annulment of those decisions was upheld by judgment No 3478/2000. The court held that, taking into account the findings and evaluations contained in the environmental impact assessment ('the EIA'), it was apparent that the assessment contained a thorough and informed evaluation which balanced the impact of those works against the needs which they were to meet and, in particular, the maintenance and strengthening of productivity in the plain of P. However, the court also held that that assessment did not consider any alternative solution capable of avoiding the destruction of most of the important monuments in the region concerned. Consequently, those decisions were annulled in their entirety.

After the Simvoulio tis Epikratias delivered that judgment, the Minister of the Environment and Public Works decided to commission a 'supplementary environmental impact assessment on the partial diversion to river P. of the waters of the river A. It is apparent from that assessment, produced in 2002, that its aim was, in particular, to explore projects which were full alternatives to that diversion, to present new environmental data which had in the interim become available on the areas affected by the works and to clarify the environmental impact and the remedial measures, taking into account the specific technical studies carried out in those affected areas since completion of the environmental impact assessment produced in 1995. That supplementary assessment was approved by a decision of the Minister of Culture of 13 March 2003.

Thereafter, the competent ministers issued their joint decision of 19 March 2003 which approved the environmental parameters applicable to the construction and operation of the works partially to divert the upper waters of A river to P river.

That decision was annulled by judgment No 1688/2005 of the Simvoulio tis Epikratias. In that judgment, the court held that, taking into account the provisions then in force of Law

1739/1987 (FEK A' 201/20.11.1987) and in the light both of Directive 2000/60 and of the principle of sustainable water management, the execution of works exploiting water resources was permitted only if such works were part of a programme of sustainable development of those resources. The work relating to the project at issue in the main proceedings had never been incorporated into such a programme, which, moreover, had never been implemented. As a consequence of that decision to annul, the *Simvoulio tis Epikratias* also annulled, by judgment No 1186/2006, a decision of 18 March 2005, whereby the Minister of the Environment approved the award of the contract for the 'completion of the Sikia dam'.

On 2 August 2006, Law 3481/2006 (FEK A' 162/2.8.2006) was adopted; Articles 9 and 13 thereof, approving the project at issue in the main proceedings, were submitted to the Greek Parliament, in the form of an amendment, on 6 July 2006. Article 9 of that law provided that, until the ratification of the national programme for management and protection of the water resources of the country and the regional management plans, it was possible to approve management plans for the waters of specific river basins and to transfer water to other basins, and that projects relating to such plans had to be approved by legislation where they were large-scale projects or projects of national importance. Under Article 13 of that law, the works associated with the project at issue in the main proceedings were defined as large-scale works and works in the public interest and the management plan for the A. and P. river basins was approved, as were the environmental specifications applicable to the construction and operation of the works associated with that project.

Article 13(4) of Law 3481/2006 provided that it was possible, in accordance with the management plan and the environmental parameters ratified in Article 13(3), to bring into service or complete construction of the public works and the works of *Dimosia Epikhirisi Ilektrismou* (DEI (the Public Power Corporation of Greece)) relating to the diversion of the upper waters of the river A. to P. or the production of electrical energy which had been subject to a public procurement procedure and which were constructed or under construction. On the basis of that provision the company awarded the contract was instructed to continue the work which it had suspended following the judgment which annulled the award of the contract.

The applicants in the main proceedings seek the annulment of the project at issue in the main proceedings in its entirety. The actions are directed against both Article 13 of Law 3481/2006 and the related administrative measures. The *Simvoulio tis Epikratias* states that both the measures approving the environmental parameters and the measures pursuant to which the works associated with that project were to be carried out had previously been annulled by judgments of that court delivered prior to the entry into force of Law 3481/2006. In the opinion of the referring court, there is therefore an attempt to adopt those measures anew by means of the abovementioned management plan, which was approved on the basis of Article 9 of that law. The main question at issue in the main

proceedings is the compatibility of the provisions of Articles 9 and 13 of that law with European Union law.

It is obvious that the quantitative status of a body of groundwater may have an impact on the ecological quality of surface waters and terrestrial ecosystems associated with that groundwater body.

QUESTIONS:

1. Is national legislation that permits the transfer of water from a particular river basin to another river basin, without the plans having yet been drawn up for the river basin districts within which the river basins from and towards which water will be transferred are located, consistent with Articles 2, 3, 4, 5, 6, 9, 13 and 15 of Directive 2000/60, given that, under Article 2(15) of that directive, the main unit for management of a river basin is the river basin district to which it belongs?

2. For the purpose of Articles 2, 3, 5, 6, 9, 13 and 15 of Directive 2000/60, is the transfer of water from a river basin district to a neighboring river basin district permitted?

Should the answer be in the affirmative, can the purpose of that transfer be only to meet water-supply needs or can irrigation and power generation also be served? Is it in any event a requirement, for the purpose of those provisions of that directive, that the administrative authorities have decided, stating reasons and on the basis of the necessary scientific study, that the receiving river basin district cannot meet with its own water resources the needs which it has in respect of water supply, irrigation and so forth?

3. Is a legislative provision which is enacted by a national parliament and which approves river basin management plans without the relevant national rules providing for a public consultation stage in the procedure before the national parliament, and without it being apparent from the case-file that the consultation procedure before the administrative authorities that is provided for in Directive 2000/60 was observed, compatible with Articles 13, 14 and 15 of that directive which concern the procedures for informing and consulting the public and for public participation?

4. Does the project fall within the scope of Directive 85/337/EEC?

Should the answer be in the affirmative, is the Directive 85/337/EEC to be interpreted as precluding legislation such as Law 3481/2006, adopted by the Greek Parliament on 2 August 2006, which approves a project for the partial diversion of the waters of a river such as that at issue in the main proceedings on the basis of an EIA for that project which had served as the basis of an administrative decision adopted at the conclusion of a procedure which complied with the obligations in terms of public information and participation laid down by that directive, even though that decision was annulled by a court order?

5. Establish whether the project falls within the scope of Directive 2001/42. Is that project to be regarded as a plan or a programme within the meaning of Article 2(a) of that directive?

6. Is the Directive 92/43 to be interpreted as precluding consent being given to a project for the diversion of water not directly connected with or necessary to the conservation of a SPA, but likely to have a significant effect on that SPA, in the absence of information or of reliable and updated data concerning the birds in that area?

7. For the purpose of Articles 3, 4 and 6 of Directive 92/43, can reasons for which a project to divert waters is undertaken that relate principally to irrigation and secondarily to water supply constitute the imperative public interest which that directive requires in order for that scheme to be permitted to be carried out notwithstanding its adverse effects on areas protected by that directive?

Additional case law to study: C-381/07