



**Le juge administratif
et
le droit communautaire
de l'environnement**

**National administrative courts
And
Community
Environmental law**

Roumanie-Romania

**Réponse au
questionnaire
Answer to
The questionnaire**

SEMINAR FOR COUNCILS OF STATE AND SUPREME ADMINISTRATIVE JURISDICTIONS

28 JANUARY 2008, BRUSSELS

QUESTIONNAIRE

1. Information and public participation in environmental issues

Secondary Community law makes provision for procedures to inform the public of environmental data and for citizen participation in the development of projects that are likely to impact the environment.

The two main texts in force are Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC; and Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment as later amended.

Other international texts, such as the Aarhus Convention of 25 June 1998 or Article 8 of the European Convention for the protection of Human Rights and Fundamental Freedoms also apply and the European Court of Human Rights ruled, on the basis of these texts, that member states had an obligation to provide information on environmental matters.

A - Application of regulations

Has the respective application scope of these texts, and the Community directives in particular, led to disputes? How has national case law clarified the

concepts contained in these texts considering, in particular, the case law of the Court of Justice of the European Communities?

For example, has the establishment of the party to be consulted, as provided for under Directive 85/337 and referred to as the "public concerned", ever been the subject of litigation? If so, how did your court settle the matter? Do you feel that the explanations provided on this matter by Directive 2003/35/EC, which modified the previous directive, such as the concepts of the public "likely to be affected" by a project or "having an interest in" a procedure to authorise a given project, clarify the scope of the text?

***NOTE:** Responses given by the High Court of Cassation and Justice of Romania – The Administrative and Fiscal Division ("HCCJ") and prepared by judge Dana Iarina Vartires.*

The responses presented below are based on the personal best knowledge of the HCCJ representative judge and/or on the information furnished by the International Affairs Division of the HCCJ.

Given the fact that Romania has been integrated into the European Union just recently, on January 2007, we cannot indicate yet any jurisprudence nor disputes on the matter described.

Nevertheless Romanian legislation regarding the environment protection, namely the Emergency Ordinance no. 195/2005, has been several times amended, most recently in 2007, just in order to comply with all the obligations assumed in the integration process as well as in view of integration of the European environmental legislation.

Article 5 in the Emergency Ordinance no. 195/2005 expressly provides that Romanian State recognizes to any citizen the right to a healthy environment, guaranteeing in this respect (i) the public access to information on the environment with observance of confidentiality obligations, as provided by applicable laws, (ii) the right to association in associations for the environment protection, (iii) the right for being consulted in the decision process as well on the issuance of concerned

legislation, (iv) the right to file complaints with competent courts, directly or through the environment organizations, whether or not a prejudice occurred.

Since 1997, the High Court of Cassation and Justice through a decision (No. 11/12.06.1997), recognized actually the right of the citizens to file complaints with the courts on environmental matters.

In addition, we have to mention that according to article 20 in the Emergency Ordinance no. 195/2005 the public consultation is mandatory in the procedure for the issuance of the statutory acts according to the applicable legislation and as provided by the Aarhus Convention (article 20 para 1-3).

B - Judge control techniques

How much control does the administrative judge exercise over the administration's compliance with its obligations to inform citizens and facilitate public participation? In other words, how much discretion does it allow the administration in this regard? And what sanctions are issued when the judge observes that one of the obligations not been met?

The consultations provided for under Directive 85/337/EEC may take place during long and complex procedures before official permits are issued. Does failure to comply with obligations systematically lead to the simple annulment of the permit? Or does case law show that annulment is reserved for cases where the irregularities observed are substantial? Is it possible to make the entire or part of the procedure compliant?

For the reasons mentioned above, no specific caseload to be indicated on that specific matter. According to article 18 in the Emergency Ordinance no. 195/2005, the administrative courts are competent to solve any and all litigation generated by the issuance, the revision, the suspension or the annulment of the statutory acts.

As a general rule, the administrative judge is always entitled to verify the legality of the issued acts as well as of the procedures followed, step by step. Of course a certain degree of discretion is allowed to the administration bodies, especially on opportunity. Nevertheless, the specific nature of the regulatory acts issues on environmental matters cannot be denied.

C - Open question

In addition to the two previous questions, has your court issued other decisions on waste law or polluting installations law that should be noted? If yes, please summarise these decisions in a few lines.

N/A

2. Pollution law (example of polluting installations)

Secondary Community law on waste and polluting installations represents an attempt to reconcile economic growth with environmental protection.

The two main texts in force in this regard are framework Directive 2006/12/EC of the European Parliament and the Council of 5 April 2006 on waste (which replaces Directive 75/442/EEC) and Directive 96/61/EC of the Council of 24 September 1996 concerning integrated pollution prevention and control.

A - Application of regulations

How are responsibilities distributed under your national legislation in connection with the restoration of polluted sites? Does the selection of the party responsible (operators of sites or holders of waste) raise problems? Moreover, is it possible, in certain cases, to question the responsibilities of the public

authorities in charge of applying the regulation in the event that they have not sufficiently exercised their powers to monitor and control industrial manufacturers?

Directive 96/61, for example, makes provision for the satisfactory rehabilitation of an operating site once operating activities have been completed. Problems can arise when the relevant public authority intends to exercise its supervision and control powers to end pollution that emerges after operating activities have ended. For example, can these powers be exercised immediately? Against which party: the former operator, the current owner? Can the responsibility of the relevant authority be applied due to a shortcoming in the exercise of its prerogatives?

The principle stipulated in the Romanian legislation is that the liability for the prejudice created to the environment has an objective nature, independent from guilt. In other words the victim will have to prove just the existence of the prejudice as well as the connection between the prejudice and the generating activities. The proof of the guilt is thus irrelevant. In case the generating activities are performed by several authors, they will be jointly liable, according to the express provision in the Emergency Ordinance no. 195/2005 (article 95).

The Emergency Ordinance no. 195/2005 also provides that the operator generating the pollution is liable (« the polluter is responsible »). This principle is grounded on a negative idea, meaning that the state budget does not have to bear the costs of the damages caused to the environment by private activities. According to Romanian law infringement of the legal obligation of private agents and/or persons for the site rehabilitation is considered a contravention and sanctioned with fines, of course in case any criminal liability is excluded. With regard to the environment liability, under specific circumstances, also the bodies of the local administration can be held liable, as well as physical persons.

B - Judge control techniques

What is the scope of the powers of a judge ruling on a dispute concerning the application of one or other of these regulations? Are there procedural regulations or rules of evidence before the judge or procedures for establishing specific facts connected with these matters, given, in particular, their specific technical nature?

When asked, for example, to rule on the decision taken by the relevant authority on the request for prior authorisation provided for under Directive 96/61, is the judge only permitted to annul the decision? Or may the judge also amend the decision or impose other measures?

What rules for the transfer and taking of evidence does the judge apply to settle the dispute? Can the judge request special investigation measures (e.g. expert opinions or amici curiae)?

We cannot make reference to any jurisprudence developed under or in connection of the specific matters of the authorisations issued under Directive 96/61. Generally speaking, the administrative judge is entitled to request during trial proceedings any type of investigations it considers appropriate and necessary to settle the dispute. Again, as a general rule, without necessarily direct application of the Directive 96/61, the administrative judge is permitted to annul an administrative act, totally or partially, to impose the authority to issue certain acts, having the competence also to rule upon the legality of the operations or of the preparatory acts taken into consideration for the issuance of the administrative act subject to litigation.

C - Open question

In addition to the two previous questions, has your court issued other decisions on waste law or polluting installations law that should be noted? If yes, please summarise these decisions in a few lines.

N/A