

Yearbook
of
International Environmental Law
Volume 13
2002

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OXFORD
UNIVERSITY PRESS

Protection Agency has had problems in identifying all of the substantial obligations under the directive. First, after an opening letter from the Commission, the directive was implemented by Ministerial Ordinance no. 350 of 29 May 2002 on the Limitation of Emissions of Volatile Organic Compounds Due to the Use of Organic Solvents in Certain Activities and Installations.

The problems of implementing the air quality directives also seem to continue. In particular, Denmark has had a problem with the penalty provisions. Danish legislation does not provide any legal basis for enforcement and sanctions in the case of non-compliance. The last and most recent example is the Danish implementation of EC Directive 2001/81 on National Emission Ceilings for Certain Atmospheric Pollutants. According to Article 14 of the directive: "Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties shall be effective, proportionate and dissuasive." The directive is implemented by Ministerial Ordinance no. 21 of 8 January 2003. Not only was the implementation too late. The ordinance does not include any provisions on sanctions, and the programme for long-term compliance is missing although it is required under the directive. If it exists, it has been kept a secret.

The European Court of Justice (ECJ) ruling in the Irish case on non-compliance with EC Directive 92/43 on the Conservation of Natural Habitats and of Wild Fauna and Flora Caused by Sheep Grazing (Habitat Directive) (case C 117/00) raises even more substantial problems with Danish implementation of this directive. Until the ECJ ruling, the Danish authorities believed that protection under Article 6 of the Habitat Directive did not require restrictions on existing use. After the ruling, it is clear that the official Danish interpretation is wrong. However, this decision has caused another problem to arise. Under section 73 of the Danish constitution, such interference in the use of private land might require expropriation and compensation to affected landowners. Taking into account the number of landowners affected by the designated areas (approximately 7 per cent of the Danish territory), it is not an easy task to bring Danish nature protection legislation into compliance with EC obligations. How it will be done has not been clear. This misinterpretation, as well as other misinterpretations of the protection required under the Habitat Directive by the Danish authorities, has been the cause of great debate in Parliament, which at least intends to make Danish legislation on nature protection compliant with EC obligations.

Peter Pagh

B. Finland

(1) Major Conferences

Finland participated very actively in the World Summit on Sustainable Development (WSSD). The national preparations took place mainly in the Johannesburg 2002 Preparation Committee, which was established under the National Committee for Sustainable Development. The Preparations Committee included all major stakeholders from the government, civil society, industry, and the unions. The priorities that the committee set for Finland with respect to the WSSD were to work towards the sustainable use of natural resources, to highlight the role of the Information Society as part of the aim of sustainable development, and to further in general issues related to the environment, health, and safety. As a member of the European Community (EC), Finland was given the main responsibility of preparing the work related to production and consumption patterns and eco-efficiency. In addition, as chair of the Arctic Council at the time of the WSSD, Finland undertook to promote Arctic-related issues.

The working procedure of the Finnish negotiating team did much to promote one of the main ideas of the WSSD—that is, the idea of partnerships, whereby sustainable development should be implemented by all the stakeholders in the societies of the world, not only by governments. The Finnish negotiating team, which comprised over 100 persons from all sectors of society, convened early in the morning on all negotiating days. The ministers first outlined Finland's negotiating positions, especially within the EC, the sectoral negotiators then told about advancements in their issue areas, after which the major stakeholders (labour unions, women, indigenous peoples, and so on) presented progress in their respective areas of interest. The transparency and openness of the working procedure were commended by all the Finnish delegates and definitely provided a good model for a national partnership in achieving sustainable development. Significantly, this model of partnership has continued in Finland after the WSSD. Two national meetings have already been organized with extensive participation in order to implement the outcomes of the WSSD.

The end result of the WSSD was quite good from Finland's point of view. The ten-year programme for changing production and consumption patterns, which is a Finnish initiative, now forms one important part of the Johannesburg Plan of Implementation. Arctic issues, which were totally lacking in the Rio documents, now appear in a couple of parts of the plan. In addition, the Arctic Council organized an official side-event, which received a very positive response, and an Arctic exhibition was organized in the official exhibition corner, Ubuntu Village.

(2) Court Decisions on International Environmental Law

The two previous editions of the *Yearbook*, those for the years 2000 and 2001, have examined the *Vuotos* case (see 11 YbIEL 387-96 (2000) and 12 YbIEL 410 (2001)). To summarize briefly, in 1992, Kemijoki Limited, a state-owned company, applied for a permit to construct a reservoir and dam on the upper course of the Kemijoki River. The permit was granted by the Water Court of Northern Finland in 2000; but the decision was appealed by a number of complainants to a higher court, the Administrative Court of Vaasa. The Administrative Court overturned the permit, citing the requirements of EC law and the changed environmental values as grounds for its decision.

Kemijoki Limited appealed to the Supreme Administrative Court of Finland (Supreme Court), which handed down its decision on 18 December. The court upheld the decision made by the Administrative Court of Vaasa, namely that no permit was to be granted to Kemijoki Limited, but gave different reasons for its decision. The Supreme Court applied Article 2(5) of the Finnish Water Act, which defines the criteria by which a permit may be denied where important public interests are involved. The court argued that although the provision had never been invoked before, neither had there been a case in which the impacts on the environment would have been as devastating. The construction of the reservoir would have altered the entire ecosystem. The construction of the two other reservoirs built by Kemijoki Limited in northern Finland was based on a special law, not the Finnish Water Act. Unlike the Administrative Court, the Supreme Court did not cite changed environmental values as a relevant factor in interpreting the Water Act. Rather, it argued that the Water Act must be interpreted in light of the relevant EC directives and the constitutional rights of citizens, such as the right to a decent environment, which are provided for in the Finnish constitution.

The *Vuotos* case reveals how complex environmental regulation is today, especially in states that are members of the EC. The proposed construction of a reservoir and dam by Kemijoki was covered by rules of international law, EC law, as well as Finnish national law. In regard to the first of these, although the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) was not in force when the first studies indicated that the reservoir might impact the Swedish maritime area in the Gulf of Bothnia, Finland decided to notify Sweden on the basis of this convention. This notification was effected on the basis of a declaration made by state parties when signing the Espoo Convention to the effect that states parties should apply and implement the convention even before its entry into force. Later on, the Swedish public and private parties were given the right to participate in the Finnish national proceedings in the Administrative Court of Vaasa on the basis of a valid international treaty, the 1974 Nordic Environment Protection Convention (NEPC).

Since the Administrative Court and the Supreme Court rejected the permit, the threat to the Swedish maritime areas from the Vuotos reservoir never materialized (see more specifically, chapter IV of T. Koivurova, *Environmental Impact Assessment in the Arctic: A Study of International Legal Norms* (2002)).

From the perspective of EC law, the main problem in the *Vuotos* case was the threat that the reservoir would cause to important bird areas in the Kemiharaa mires (wetlands), which, in the view of the Commission of the EC, qualified as special protection areas under EEC Directive 79/409 on the Conservation of Wild Birds (Wild Birds Directive). It was estimated that most of these important bird areas would be inundated by the reservoir and, thus, that its construction would breach the requirements of the directive. The Commission had started preparations for a case against Finland in the European Court of Justice (ECJ) on the basis of the permit granted by the Water Court of Northern Finland. Yet, since the Administrative Court and the Supreme Court overturned the permit on appeal, the Commission did not have to bring an action and the case did not materialize. In another instance, the Commission had brought an action against Finland in the ECJ, accusing Finland of breaching the Wild Birds Directive by, for instance, not including all the important bird areas as specially protected areas in the Natura 2000 Network. The Commission specifically mentions the Kemiharaa mires as one of the areas that should have been designated as a specially protected area. The advocate general has given his opinion, but the case has yet to be decided.

It can convincingly be argued that the Finnish legal system was able to apply both international law and EC law in a legally correct manner in its national licensing procedure. Finland notified Sweden of the potential negative effects on the latter's maritime area even before the legally valid convention, the NEPC, required it to do so. According to the NEPC, it is the licensing authority that is responsible for notifying other states of potential negative effects. Yet, as mentioned earlier, Finland decided to apply the Espoo Convention even before it had entered into force. Finland also allowed the Swedish private and public parties to the *Vuotos* case to participate in its national licensing procedure on the basis of the NEPC. Moreover, the Supreme Court took into account the relevant directives when interpreting the Finnish Water Act. In overturning the permit, the Supreme Court also showed that even large-scale projects promoted by a state-owned company can be halted if serious environmental impacts are likely to take place.

(3) Bilateral International Environmental Agreements

The Espoo Convention was concluded in 1991 and entered into force in 1997. On the basis of the convention, especially Article 8 thereof, Finland and Estonia concluded a bilateral treaty on 21 February entitled the Agreement

between the Government of the Republic of Estonia and the Government of the Republic of Finland on Environmental Impact Assessment in a Transboundary Context. The agreement entered into force on 6 June. The Espoo Convention stipulates general rules on notification, transboundary impact assessment, and consultation where a significant transboundary impact is likely to take place between states parties. From the beginning, the meetings of signatories and the later meetings of parties to the convention have promoted bilateral treaties to specify the general obligations of the convention. The agreement does not so much specify the obligations of the convention as between Finland and Estonia, since most of its provisions are almost identical to the corresponding ones in the Espoo Convention. Rather, it creates an institutional framework by which the parties can develop the general treaty regime provided by the Espoo Convention in a direction that best serves their interests. Articles 5 and 6 of the agreement establish the Commission on Environmental Impact Assessment, which will work under the more general body set up by the 1991 Agreement on Cooperation in Environmental Protection between the parties. The commission operates as an advisory body to oversee and develop the agreement, and its tasks include the determination of whether joint transboundary impact assessments are necessary in individual cases and, if so, the establishment of ad hoc working groups to oversee and coordinate the actual assessment procedures. The commission consists of six members from both parties and convenes when necessary or at least once a year.

(4) Changes to Multilateral Environmental Agreements

The Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol) entered into force for Finland on 14 January 1998. Annex V of the protocol dealing with nature conservation of differing kinds—for example, the designation of certain areas as Antarctic specially protected areas, Antarctic specially managed areas, or historic sites and monuments—entered into force for Finland on 19 June. The 1999 Beijing Amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer, by which the meeting of parties strengthened the control measures on ozone-depleting substances, entered into force for Finland, among others, on 25 February.

Timo Koivurova

C. Norway

(1) Ratification of, and Accession to, Treaties

In 2002, Norway ratified the 1997 Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change (Kyoto Protocol), the

2001 Stockholm Convention on Persistent Organic Pollutants, the 1999 Protocol to Abate Acidification, Eutrophication and Ground-Level Ozone to the 1979 Convention on Long-Range Transboundary Air Pollution, and the 2001 Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean. Norway did not find it necessary to adopt amendments to its legislation when ratifying these instruments. However, several initiatives are under consideration with a view to ensuring the timely implementation of the Kyoto Protocol.

(2) Signature of Treaties

Norway was among the countries that signed the UN Food and Agriculture Organization's 2001 International Treaty on Plant Genetic Resources for Food and Agriculture.

(3) Revised Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

In order to improve its implementation of CITES, Norway has introduced new regulations specifically aimed at the implementation of the convention.

(4) 1992 Agreement on the European Economic Area (EEA)

The EEA continues to play an essential role in the development of Norwegian environmental legislation and policy.

(5) Climate Change Issues

The discussions regarding the construction of gas-fired power plants have continued in 2002. Work on such plants has not yet started, and discussions have in part focused on the possibility and legality of deep seabed sequestration of carbon dioxide. Legal issues have been raised under the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic. A revised white paper presenting strategies to deal with greenhouse gas emissions was presented in March (St. Meld. no. 15 (2001–2)). Work on a system for emission trading is progressing with a view to establishing a national quota-trading system, which will be operating as of 2005.

(6) Marine Environment

Norwegian authorities have been focusing on issues related to the marine environment. Norway was host to the fifth International Conference on the Protection of the North Sea. Several of the issues addressed during the conference have been high on the agenda of public authorities during the year. A comprehensive white paper on the marine environment was presented in March (St. Meld. no. 12 (2001–2)). One of the proposals was