



## **Scientific Knowledge in Environmental Litigation: National Solutions, EU Requirements and Current Challenges**

Maastricht 21<sup>th</sup> April 2017

### **SUMMARY**

‘**Scientific knowledge in environmental litigation: National Solutions, EU Requirements and Current Challenges**’ is a one-day international workshop for researchers and judges convened by Associate Professor Mariolina Eliantonio (CERiM<sup>1</sup>) and Doctoral Candidate Tiina Paloniitty (University of Helsinki). The workshop is aligning with a broader CERiM conference ‘**The Contestation of Expertise in the European Union: Between Evidence-Based Decision-making and Post-truth Politics?**’ to take place in Maastricht on 20<sup>th</sup> April.

### **WORKSHOP THEME**

Environmental litigation is characterised by the fact that much of its content is based on complex scientific assessments made by the administrative authorities. Controversies are often born out of disagreements on a certain technical assessment made by the authorities, which, in turn result—in the view of applicants—in the violation of environmental law.

This issue is closely linked to the depth of review which courts in environmental matters feel entitled or obliged to exercise. The deeper the review of the facts and the technical assessments made by the administration is in a certain legal system, the wider the powers of courts (or at least so one would expect) to avail itself of help to understand those very facts and assessments.

The solutions in which the legal systems have chosen to tackle this issue vary significantly. In some legal systems, courts play an active role to examine the technical aspects of a dispute and are allowed—or even obliged—to ask for advice from technical experts. This is the case in Germany, for example.

In other countries, courts partly consist of technical experts, which, at least to a certain extent, ensure that the courts understand the technical aspects they have to assess. This is the case for example in Finland and Sweden. The reformatory process in both countries allows the administrative courts to review all aspects of the pending case, scientific review included in that assessment.

A different approach, which seems to be quite unique, is followed in the Netherlands. Courts may ask help from the ‘Foundation for advising the administrative judiciary’ (*Stichting Advisering Bestuursrechtspraak*,

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<sup>1</sup> The Centre for European Research in Maastricht (CERiM) is a research platform for collaboration that brings together more than one hundred researchers from the Faculty of Arts and Social Sciences and the Faculty of Law of Maastricht University. CERiM is a Jean Monnet Centre of Excellence and provides an interdisciplinary research venue to establish synergies, joint projects and events in the fields of European law, governance, and their respective history.

StAB). This foundation employs some 30 technical experts whose task is to write reports about the technical aspects of pending cases.

There does not seem to be any explicit reference to neither in international nor in EU law on the requirements concerning the scientific knowledge of the judge in environmental matters. However, such requirements could perhaps be read in Article 9(2) Aarhus Convention that requires the possibility of a review of the “substantive and procedural legality”. If a court or an impartial body has to review the substantive legality of an environmental decision, it has to be able to understand the technical aspects and background of the decision.

Similarly, the CJEU has recently stressed that national courts have to be able to assess all aspects of the legality, and not only the procedural aspects, of the technical assessment (in the relevant cases, the environmental impact assessment) on which the challenged decisions were based.<sup>2</sup>

Furthermore, it could be argued, although this issue has never been brought to the attention of the CJEU in these terms, that the possibility for the judge to have access to the necessary technical knowledge to rule on a case is part of the broader principle of effective judicial protection, which is both a general principle of EU law<sup>3</sup> and a fundamental right enshrined in Article 47 of the Charter.

The national rules on how judges access the necessary technical knowledge to rule on a case have, until now, not been subject to any comparative examination. This lack of knowledge is all the more problematic because, from a subjective point of view, some of the national solutions could be in breach of the principle of effective judicial protection, and, from an objective point of view, the differences in the national solutions could impair the uniform application and enforcement of EU law.

The workshop aims at exploring several national perspectives on the way in which judges access scientific knowledge in environmental matters, with the aim of answering the overarching questions as to whether, in the respective legal systems, the principle of effective judicial protections is guaranteed, and whether the current differences in the law and the practice of the various legal system might impair the uniform and effective enforcement of EU law.

## PROGRAMME

<i>Time</i>	<i>Title</i>	<i>Presenter</i>
9:00 – 9:10	Opening	<i>Mariolina Eliantonio and Tiina Paloniitty</i>
9:10 – 9:30	The international (Aarhus) and EU framework	<i>Mariolina Eliantonio</i>
<i>Part I – National Legislative Frameworks on Access to Scientific Knowledge in Environmental Litigation</i>		
9:30 – 11:00	Session I Chair and discussant: Ellen Vos (Maastricht University)	
	Italy	<i>Roberto Caranta, Turin University</i>

<sup>2</sup> E.g. Case C-72/12, *Gemeinde Altrip and Others v Land Rheinland-Pfalz* ECLI:EU:C:2013:712, para 37; case C-137/14, *Commission v. Germany* ECLI:EU:C:2015:683, para 48.

<sup>3</sup> Case C-432/05, *Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern* ECLI:EU:C:2007:163.

	Germany	<i>Franziska Grashof, Maastricht University</i>
<i>11:00 – 11:20 Coffee break</i>		
11:20 – 12:50	Session II Chair and discussant: Marjan Peeters (Maastricht University)	
	Finland	<i>Sinikka Kangasmaa and Tiina Paloniitty</i>
	Netherlands	<i>Chris Backes, Utrecht University</i>
<i>12:50 – 14:00 Lunch</i>		
14:00 – 15:30	Session III Chair and discussant: Chris Backes (Utrecht University)	
	Ireland / UK	<i>Aine Ryall, University College Cork</i>
	Poland	<i>Magdalena Bar, Jendroška Jerzmański Bar &amp; Partners, Environmental Lawyers</i>
<i>15:30 – 15:50 Coffee break</i>		
<i>Part II – The Judge’s Perspectives: Discussion of a case scenario Moderated by Jan Darpö (Uppsala University)</i>		
15:50–16:20	Pros and cons in different solutions in meeting the demands for review of substantive legality	<i>Jan Darpö, Uppsala University</i>
16:20–17:30	Germany  Italy  Sweden  Netherlands	<i>Matthias Keller (Administrative Court of Aachen, Germany) Giovanni Tulumello (Regional Administrative Court of Sicily, Italy) Anders Bengtsson (Växjö Land and Environmental Court, Sweden) Rene Seerden (District Court of Maastricht, the Netherlands)</i>
17:30 – 17:40	Conclusions	<i>Mariolina Eliantonio and Tiina Paloniitty</i>

### **PRACTICALITIES**

The workshop output is a special issue in a peer-reviewed environmental law journal (for example the Journal of Environmental Law or the Review of European, Comparative and International Environmental Law or some other relevant journal).

The presenters (excluding the judges in the panel discussion) are requested to send an abstract or detailed outline of approximately 1,000 words by 30<sup>th</sup> March 2017. The abstracts will be circulated among the participants before the workshop.

The full papers of (approximately) 8,000–10,000 words are due 31<sup>st</sup> May 2017 (or later pending on the journal's timetables).