



Press and Information

Court of Justice of the European Union

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Judgment in Case C-43/10

Nomarchiaki Aftodioikisi Aitoloakarnanias and Others v Ipourgos
Perivallontos, Khorotaxias kai Dimosion Ergon and Others

Irrigation and the supply of drinking water constitute overriding public interests which may, in principle, justify the diversion of a river

However, the Member State must ensure that the adverse impact of the project on the sites concerned is precisely identified and take all compensatory measures necessary for the protection of the overall coherence of Natura 2000

For more than 20 years, the Greek authorities have been working to partially divert the River Acheloos in western Greece partially into the River Pinios in eastern Greece and to utilise its upper waters to construct dams. The two rivers have their source in the Pindos mountain range. The Acheloos, 220 kilometres long and up to 90 metres wide, fed by a number of tributaries, flows into the sea in the Gulf of Patras. It is one of the largest natural water systems in the country and constitutes a very important fluvial ecosystem. The Pinios crosses the plain of Thessaly and flows into the Gulf of Salonika. The aim of the project is to meet the irrigation needs of Thessaly, to produce electricity, and to provide a supply of water to a number of towns and cities in Thessaly.

However, a number of local authorities and associations brought an action before the Council of State against the Minister for the Environment, seeking the annulment of the project. In order to rule on that action, the Council of State decided to refer several questions on the interpretation of European Union law to the Court of Justice.

After answering that the Water Framework Directive¹ and the directive on the assessment of the effects of certain public and private projects on the environment² do not, in principle, preclude the project at issue, the Court interprets the **Habitats Directive**³.

In that regard, the Court states that the list of sites of Community importance (SCIs) for the Mediterranean biogeographical region – including, in relation to the area concerned, several lakes and the Acheloos delta – took effect⁴ prior to the adoption of the law approving the project for the partial diversion of the river. Further, it was from the time when Greece included the sites concerned in its proposed SCI list that those sites required appropriate measures of protection for the purpose of safeguarding the ecological interest which they had at national level. Accordingly, Greece was obliged, even before the entry into force of the decision adopting the list of SCIs, to prohibit interventions which might create the risk of seriously compromising the ecological characteristics of those sites. After the notification of that decision to the Member State concerned, the assessment procedure must ensure that the project is authorised to the extent that it would not adversely affect the integrity of the site. That procedure must be organised in such a manner that the competent authorities can be certain that a project will not have adverse effects on the integrity of the site. Consequently, **consent cannot be given to a project for the diversion of water**

¹ 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).

² 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 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

³ 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).

⁴ Under Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region (OJ 2006 L 259, p. 1).

which is not necessary to the conservation of a special protection area (SPA)⁵, but likely to have a significant effect on it, in the absence of reliable and updated data concerning the birds in that area.

Further, if a project must nevertheless be carried out – for imperative reasons of overriding public interest, including those of a social or economic nature – in spite of a negative assessment of the effects on the site and there are no alternative solutions, **knowledge of those effects is an essential prerequisite for the weighing of those public interest reasons and the damage** to the site in order to determine the nature of any compensatory measures. The Member State must take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It will have to take into account the extent of the diversion of water and the scale of the works involved in it and thus ensure that the adverse impact of the project on the site concerned is precisely identified.

Thus, irrigation and the supply of drinking water constitute an ‘overriding public interest’ which can, in principle, justify a project for the diversion of water in the absence of alternative solutions.

On the other hand, in order to justify the implementation of **a project for the diversion of water which has an adverse impact on the integrity of a SCI which hosts a priority natural habitat type and/or a priority species**, the only considerations which may be raised are those relating to **human health or beneficial consequences of primary importance for the environment**. The supply of drinking water is, in principle, to be included within considerations relating to human health. As regards irrigation, it cannot be ruled out that it may, in some circumstances, have beneficial consequences of primary importance for the environment. Other imperative reasons of public interest may be relied on only further to an opinion from the Commission.

It is for the referring court to assess whether the project at issue in this case does in fact adversely affect the integrity of one or more SCIs hosting a priority natural habitat type and/or a priority species.

Lastly, the Court confirms that **the Habitats Directive, interpreted in the light of the objective of sustainable development⁶, permits**, in relation to sites which are part of the Natura 2000 network, **the conversion of a natural fluvial ecosystem into a largely man-made fluvial and lacustrine ecosystem, provided that, inter alia, the Member State takes all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected**. The principal objective of that directive is to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements. The maintenance of such biodiversity may in certain cases require the encouragement, of human activities.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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⁵ Member States are to classify in particular the most suitable territories in number and size as special protection areas for the conservation of wild birds in the geographical sea and land area which is subject to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (Article 4(1)). Special protection areas classified by the Member States are moreover part of the Natura 2000 network.

⁶ As enshrined in Article 6 EC.