



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-559/19
Commission v Spain

According to Advocate General Kokott, the excessive abstraction of groundwater in the Andalusian Doñana natural area infringes EU law

That abstraction does not infringe the prohibition of deterioration under the Water Framework Directive, but infringes the Habitats Directive in so far as it causes adverse effects on three protected areas of European importance

The Doñana natural area in Andalusia, southern Spain, covers, inter alia, Doñana National Park and Doñana Nature Park. In 2006, three important protected areas in the natural area were designated as sites of European importance under the Habitats Directive: ¹ Doñana (a bird protection area since 1987), ² Doñana Norte y Oeste and Dehesa del Estero y Montes de Moguer. The Doñana natural area also hosts, mainly outside those protected areas, the most important European growing areas for 'red fruit', particularly strawberries, for the irrigation of which significant quantities of groundwater are abstracted. That abstraction exceeds groundwater recharge, in certain areas at least, with the result that the groundwater level has been falling for many years.

The Commission considers that this infringes EU law, in particular the prohibition of deterioration under the Water Framework Directive ³ and, in view of various habitats in the protected areas, which have dried out as a result of the falling groundwater level, also the prohibition of deterioration under the Habitats Directive. The Commission therefore brought before the Court of Justice an action against Spain for failure to fulfil obligations.

In today's Opinion, Advocate General Juliane Kokott proposes that the Court of Justice uphold in part the Commission's action.

As regards the Water Framework Directive, the Advocate General points out that, in respect of groundwater, that directive provides for a prohibition of deterioration (to be complied with by the end of 2009) and a requirement for improvement (in principle, good status was to be achieved everywhere by the end of 2015, but Spain made use of an extension until 2027). The Commission's complaint nevertheless relates solely to an infringement of the prohibition of deterioration.

However, **the prohibition of deterioration does not require groundwater abstraction to be reduced such that less water is abstracted than is recharged, but only that overexploitation does not increase. Simply lowering the groundwater level, that is to say, reducing groundwater reserves, is therefore not to be regarded as deterioration per se.** An end to excessive groundwater abstraction is the aim of the requirement for improvement, the infringement of which is not alleged by the Commission.

¹ 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), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193).

² The Commission does not allege that protected bird species are adversely affected and therefore this protection is immaterial in the context of the present case.

³ 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), as amended by Commission Directive 2014/101/EU of 30 October 2014 (OJ 2014 L 311, p. 32).

According to Advocate General Kokott, the Commission has not demonstrated an increase in overexploitation and, consequently, an infringement of the prohibition of deterioration.

However, Spain has infringed the Water Framework Directive in so far as it failed to take into account, as part of the necessary review of the impact of human activity on the status of groundwater in the Doñana natural area, **abstraction of drinking water** (which, after all, corresponds to 4-5% of legal abstraction for agricultural purposes) **and illegal abstraction in its estimate of groundwater abstraction**. Without these factors, the status of the groundwater cannot be correctly assessed, nor can it be foreseen whether measures to combat illegal abstraction are adequate. The Commission has not, however, sufficiently substantiated its allegation that there are too few measurement points.

Spain has further infringed the Water Framework Directive by making no provision under the 2016-2021 management plan for the Guadalquivir Basin **for measures to prevent adverse effects on protected habitat types in the Doñana protected area resulting from water abstraction to cover demand from Matalascañas, a tourist resort in the immediate vicinity.**

As regards the Habitats Directive, the Advocate General is of the view that the Commission has adequately demonstrated the probability that groundwater abstraction currently practised in the Doñana natural area has, since mid-2006 (from which time the prohibition of deterioration in the Habitats Directive has applied), **had significant adverse effects on protected habitats in the three protected areas, Doñana, Doñana Norte y Oeste and Dehesa del Estero y Montes de Moguer. Since Spain has not been able to rebut those arguments** and it has not been possible to justify adverse effects on protected areas on the basis of socioeconomic interests if only because there has been no appropriate assessment of the effects of groundwater abstraction on the protected areas concerned, **Spain has infringed the prohibition of deterioration under the Habitats Directive.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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

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