



Decision without preliminary reference Summary

National file reference

3-20-771

ECLI number

ECLI:EE:RK:2023:3.20.771.16911

Subject

Environmental impact assessment - Climate impact - Greenhouse gas emission - Vulnerability to climate change

To be introduced freely (350 characters including spaces maximum)

*Please explain very briefly which **question(s) of law** the case deals with. It should be clear from the subject, why the decision is being uploaded to JuriFast (relevance of the decision for European Union law or the subjects put forward by the ACA).*

Best practice examples:

- ☐ *Withdrawal of residence permit obtained by fraud - Consequences for relatives ignorant of the fraud – Directive 2003/86/EC - Directive 2003/109/EC*
- ☐ *Detention of third country nationals with the purpose to return them to another EU Member state - Already entitled to asylum in another EU Member State - Articles 3, 4, 6 and 15 of Directive 2008/115/EC (Return Directive)*
- ☐ *VAT-related treatment of medical telephone consultations - Telemedicine - Curative treatment in the domain of human medicine - Article 132 section 1 c of EC guideline 112/2006 - Tax exemption*
- ☐ *COVID-19 crisis - Monocratic Decree - Home Isolation Order*

Identification of the parties (in accordance with the principles of the GDPR)

Fridays for Future Estonia /non-profit association MTÜ Loodusvõlu/ - City of Narva-Jõesuu.

Background/useful facts of the case

An environmental organisation contested a building permit for constructing a shale oil production plant. The organisation mostly relied on the fact that the construction of the oil plant did not enable to fulfil the objective of climate neutrality, but also blamed that there had been other shortcomings in assessing the environmental impact of the plant.

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Please restrict yourself to the facts, which are necessary to understand the relevance of the case for European Union law or for the subjects put forward by the ACA. The course and content of the national lawsuit must only be explained as far as they help understanding these purposes.

Examples:

- ☐ *“The case concerns the refusal by the Municipal Executive of Diemen (Municipal Executive) to issue an environmental permit for the purpose of derogating from a zoning plan which has been adopted and entered into force. This derogation is intended for the use of property in Diemen for ordinary retail trade, catering and an indoor playground. There is no dispute that the zoning plan has to be classified as a ‘requirement’ within the meaning of the Services Directive (see judgment of the Court of Justice in the EU, 30 January 2018, C-31/16, Visser Vastgoed, ECLI:EU:C:2018:44). The parties disagree as to whether the zoning plan satisfies the conditions set out in Article 15(3) of the Services Directive”.*
- ☐ *“The plaintiff, an official bailiff, requested his employer to permit him to purchase a pair of VDU work glasses and reimburse the associated purchase costs amounting to €358. His application was accompanied by cost estimates and a doctor’s certificate pertaining to the need for such glasses. The employer rejected the application, claiming that the expenses had already been covered by the bailiff remuneration that had been paid in addition to the salary. The lawsuit that was directed at a new decision turned out to be successful before the administrative court. The appeal court that had permitted the appeal on the grounds of fundamental importance modified the first-instance verdict and dismissed the case, claiming that the plaintiff was not entitled to raise a reimbursement claim”.*

Summary of the legal reasoning

The Supreme Court took the view that the obligation to preserve the environment and natural sources as provided in the Constitution serves as the basis for the obligation of the State to limit greenhouse gas emissions in the conditions of global warming. There is no science-based doubt about the fact that an increase in the greenhouse gas concentration in the atmosphere contributes to global climate changes and this has in turn serious consequences for the humanity. Upon permitting developments of a significant climate impact, it must be observed that the planned activities were justified by an overriding interest and did not bring along a need to excessively restrict the freedoms of persons or the public interest in the future in order to curb climate changes.

The Court found that the climate impact of using the plant must already be assessed upon issue of a building permit. If the planned activities brought along consequences due to which it is not possible to achieve the objectives of reducing greenhouse gas emission, such activities would certainly have a significant environmental impact. The more intensively and likely the planned activities aggravate the achievement of climate objectives, the more substantial the interests justifying the activities must be. If it appears as a result of the consideration that the greenhouse gas emission accompanying the planned activities does not have to be tolerated, this constitutes an impermissible environmental impact, and the issue of a building permit must be refused.

In this particular case the Supreme Court did not identify any mistakes in the climate impact assessment but revoked the building permit due to other mistakes in the environmental impact assessment (including the vulnerability of the plant to climate change had not been analysed sufficiently enough).

The Supreme Court also emphasised that essential issues of the obligation to limit greenhouse gas emission must be decided on the basis of the best available scientific information and international obligations of Estonia by the legislator. The Constitution obligates the Estonian State to make a proportional contribution to the achievement of the objective of the Paris Climate Agreement. To this end, it is in turn necessary to establish, in good time, a realistic and legally binding stage- and sector-based emissions allocation plan for achieving climate neutrality.

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Please summarise all legally relevant aspects of the decision. This summary should make it clear to the reader why the decision is of interest to other EU member courts - given that it is not a reference for a preliminary ruling (e.g. application of an "acte claire" jurisprudence of the ECJ).

Best practice examples:

- *"The Administrative Jurisdiction Division of the Council of State of the Netherlands (Division) considers that, in granting an environmental permit, the Municipal Executive must substantiate whether the requirement (the zoning plan) is in line with the Services Directive. The Division considers that only if there is a clear breach of 'higher law' such as EU law, the zoning plan has to be declared ineffective or disapplied. A rule is only clearly contrary to higher law if the court can establish this without further investigation. This would be the case, for example, if there is no justification. The other party invoked and substantiated a breach of Article 15(3) of the Services Directive. The Division rules that the requirement is not 'clearly contrary' to the Services Directive because the Municipal Executive has provided a (posterior) explanation from which it becomes clear that the conditions of Article 15(3) of the Services Directive have been met. The Municipal Executive wins the case".*
- *"As per the conclusion reached by the BVerwG, the union-law-related guideline that follows from article 9 sections 3 and 4 of directive 90/270/EEC - according to which the employer may never be exposed to an additional financial burden associated with the task of equipping an employee with a special visual aid - would preclude indicating to a bailiff that he would have to use the portion of the fee that was earned by him and which extends beyond his alimentation to finance the costs associated with his VDU work glasses. Furthermore, according to the court, special VDU work glasses that are considered to be necessary owing to the contents of an ophthalmologic statement do not constitute a typical expense associated with the occupation of a bailiff in the sense of §1 section 3 of the bailiff remuneration regulation of the state of Rhineland-Palatinate".*

Comments

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Examples:

- ☐ *Correspondents could specify in particular whether it concerns a reversal of case law or a consistent case law.*
- ☐ *The historical background of a long judicial process.*