



**Essential Readings in Environmental Law**  
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**JUDGMENTS OF THE EUROPEAN UNION COURT OF JUSTICE**

**Ludwig Krämer**, University of Bremen, Germany

**OVERVIEW OF KEY JUDGMENTS**

**Nature conservation**

1. C-355/90 Commission v. Spain, judgment of 2 August 1993. European Court Reports (ECR) 1993 p.I-4221. *Conservation of wild birds; protection of habitats; indirect sanction*
2. C-337/89 Commission v. United Kingdom, judgment of 25 November 1992, ECR 1992, p.I-6103. *Directives require a result, not just efforts; Drinking water protection*
3. C-383/09 Commission v. France, judgment of 9 June 2009. ECR 2009, p.I-4689. *Inadequacy of measures to protect a species; Deterioration of a habitat*

**Climate change – energy**

4. C-379/98 PreussenElektra, judgment of 13 March 2001. ECR 2001, p.I-2099. *Renewable sources of energy; State aid; Free movement of goods*

**Rights of individuals/NGOs**

5. C-321/05P Greenpeace v. Commission, judgment of 2 April 1998. ECR 1998, p.1651. *Standing rights; Direct and individual concern.*
6. C-188/07 Commune de Mesquer, judgment of 24 June 2008. ECR 2008, p.I-4501. *Marine pollution; Notion of waste; Polluter pays principle; Conventions on oil pollution.*
7. C-237/07 Janecek, judgment of 25 July 2008. ECR 2008, p.I-6221. *Air quality; Right to ask for the making of a plan.*
8. C-240/09, Lesoochranarske zoskupenie, judgment of 8 March 2011. ECR 2011, p.I-1255. *Aarhus Convention. Access to justice; Obligations of national courts*

**International environmental law**

9. C-213/03 Etang de Berre, judgment of 15 July 2004. ECR 2004, p.I-7357. *Barcelona Convention; Direct effect; Obligation of Member States. Case C-239/03*
10. C-454/03 Commission v. Ireland, judgment of 30 June 2006. ECR 2006, p.I-4635. *Dispute settlement under UNCLOS; MOX plant at Sellafield; Duty of cooperation under EU law*

11. C-366/10 IATA a.o., judgment of 21 November 2011. Not yet reported. *Scheme for greenhouse gas emission allowance trading; Chicago Convention. Kyoto Protocol; Customary international law.*

### **Enforcement and Sanctions**

12. C-533/11 Commission v. Belgium, judgment of 17 October 2013. Not yet reported. *Non-compliance with earlier judgment; Financial penalties.*

### **Background**

Since 1976, the European Court of Justice (ECJ) has issued some 850 judgments in cases dealing with European Union (EU) environmental law. About three quarters of these cases were initiated by the European Commission which has, under the EU Treaties, the task to “oversee the application of Union law under the control of the Court of Justice”. The Court itself “shall ensure that in the interpretation and application of the Treaties the law is observed”.

The cases selected cannot hope to reflect the considerable contribution which the judgments of the ECJ made to the implementation and evolution of EU environmental law. The mere fact that EU environmental law – which is, after all, the law of an international organisation – can be enforced through courts had a very important influence on national, regional and local administrations, as well as on polluters and other stakeholders.

1. In case **C-355/90 Commission v. Spain**, the Court held that the EU Member States had the obligation to designate the most important areas for birds as special protection areas and provide for protection measures. Where a Member State did not comply with this obligation with regard to an area that objectively qualified as an important bird area, it has to accept, by way of sanctions, to treat that area as if it has been designated.
2. In case **C-337/89 Commission v. United Kingdom**, the ECJ clarified that, under EU law, a directive required the Member States to reach the specific results that were laid down in the directive. It was not enough that a Member State mentioned or proved that it had taken all reasonable measures to reach the results. In other judgments the ECJ indicated that circumstances within the internal national legal order of a Member State such as financial difficulties, the repartition of competences between the central State and the regions, could not eliminate the obligation of result of the Member State.
3. Case **C-383/09 Commission v. France**, concerned the protection of the European hamster (*Ciruetus ciruetus*) in France. Under the relevant EU legislation (directive 92/43 on the protection of natural habitats and wild fauna and flora), the Member States had to take legislative as well as concrete and specific measures to ensure a strict protection of that species in its natural range, prohibiting the deterioration or destruction of breeding sites or resting places. The Court found that the hamster population in Alsace (France), the only French region where the hamster existed, had strongly decreased between 2001 and 2007. Consequently, it stated that France had not complied with its obligations under EU law.

4. Case **C-379/98 PreussenElektra** dealt with a case of national measures to promote the use of energy from renewable sources. Germany had introduced legislative measures to favour the generation of energy from renewable sources, in particular by guaranteeing a certain price for such energy. A German court wanted to know whether these measures were compatible with EU law. The ECJ held that the measures did not constitute (prohibited) State aid, as it was the private energy companies which had to pay the cost of energy that was produced from renewable sources. In view of the imperfect harmonisation of energy law in the EU, the German measures could not be considered to constitute a barrier to trade of electricity within the EU.
5. In case **C-321/95P Greenpeace** went on appeal to the ECJ against a judgment by the EU General Court. That Court had to deal with an application by Greenpeace against a decision by the European Commission. The Commission had granted Spain financial support for the construction of three power plants, despite the fact that Spain had not done an environmental impact assessment for these plants which was mandatory under EU law, and despite the fact that under applicable EU law financial support for projects could only be granted, when the project complied with EU environmental law. The General Court held the application inadmissible, as Greenpeace was not directly and individually concerned by the Commission decision. The ECJ dismissed the appeal, arguing that Greenpeace could address a Spanish court which might then ask the ECJ for a preliminary decision on the meaning of EU law.
6. The case **C-188/07 Commune de Mesquer** concerned the sinking of the oil tanker Erika in 1999 and the subsequent oil spilling of the French Atlantic coast. The ECJ was asked by a French court to what extent EU waste legislation was applicable. The Court held that the oil which had been spilled constituted “waste” under EU law. It furthermore held that national law may consider the seller of the product and the charterer of the ship as being responsible under EU waste law, when these persons had contributed to the incident, for example by failure to take measures to prevent such accident, or by choosing the ship. Where the responsibility of these persons was not established under national waste law or the ceilings of the International Oil Compensation Fund Convention, national law had to apply the polluter pays principle and hold the producer of the product responsible, when he contributed, by his conduct, to the incident.
7. In case **C-237/07 Janecek**, the applicant requested the elaboration of an air quality action plan in his municipality, as the air quality limit values fixed by EU law were exceeded. On request of a national court, the ECJ decided that the applicant had legal standing to request such a plan, as his health was affected by the pollution of the air.
8. In case **C-240/09 Lesoochrnarske Zoskupenie** the Court had to decide whether Article 9(3) of the Aarhus Convention on access to information, public participation in decision-making or access to justice in environmental matters had direct effect or whether it needed first to be implemented by national regulatory measures on access to justice. The Court held that the provision had no direct effect. However, it held that the Aarhus Convention intended to give broad access to justice. Therefore it was “inconceivable that

Article 9(3) be interpreted in such a way as to make it in practice impossible or excessively difficult to exercise” the rights conferred by EU law. It was therefore declared by the ECJ, “for the national court to interpret its national law in a way which, to the fullest extent possible, is consistent with the obligations” laid down in Article 9(3) of the Aarhus Convention.

9. Case **C-213/03 Etang de Berre** dealt with the case of some fishermen who complained that fishing possibilities in the Etang de Berre had diminished because of the discharges of pollutants from a nearby power plant. A Protocol of *the Barcelona Convention on the Protection of the Mediterranean Sea* protected saltwater marshes such as the Etang de Berre. The EU had adhered to the Protocol, but France had not. The ECJ found that the EU had largely exercised its competence in water protection measures, so that the ECJ was competent to decide in substance. As the EU had adhered to the Protocol, France was, by virtue of Article 216 (2) TFEU, obliged to comply with it. In substance, the Court held that France did not respect its obligations under the Protocol (see also the case C-239/03 *Commission v. France*.)
10. Case **C-459/03 Commission v. Ireland**, concerned the construction and operation of the nuclear power plant in Sellafield (United Kingdom). Ireland complained that the United Kingdom had not fully associated it during the permit procedure and had not disclosed several documents which Ireland had wanted to see. It introduced dispute settlement procedures under the UN Convention on the Law of the Sea (UNCLOS). On application of the Commission, the ECJ found that Ireland, by introducing dispute settlement procedures under UNCLOS, had not respected the present Article 344 TFEU which grants to the ECJ exclusive competence to deal with disputes among Member States concerning the interpretation or application of EU law.
11. In case **C-366/10, IATA**, the ECJ had to answer several questions by a national court regarding whether the extension of the EU scheme for greenhouse gas emission allowance trading (Directives 2003/97 and 2008/101) to non-EU airlines, which took off or landed within the EU, was compatible with public international law. The ECJ discussed in particular the Chicago Convention on Civil Aviation, the *Kyoto Protocol*, the *EU-US Air Transport Agreement* and principles of customary international law. It concluded that the EU was entitled to include non-EU airlines into its scheme.
12. Case **C-533/11 Commission v. Belgium** concerned an application of the European Commission to the ECJ because Belgium had not fully complied with an earlier Court judgment of 2004, when the Court had found that Belgium had not taken the necessary measures to comply with directive 91/271 on urban waste water treatment. The Court found that Belgium continued not to fully apply the provisions on urban waste water treatment. It fixed a financial sanction of 10 million Euro against Belgium, plus a penalty payment of 859.404 Euro to be paid every six months that Belgium did not comply.

## Further Reading

The Website of the European Court of Justice contains an insert “case law”. If one clicks on it, access is given to a search form, where access to all closed and pending cases is given, differentiated according to the case number, the parties of the litigation, words in the text of the decision etc.

Furthermore, the website contains an insert “annotations to judgments”, where references to annotations of all judgments are given. The judgments are arranged according to their case number. The annotations – in the different EU languages – are in chronological order.

1. Bandi, G., (ed), The impact of ECJ jurisprudence on environmental law. Budapest 2009
2. Hedemann-Robinson, M., Enforcement of European environmental law. London-New York 2007
3. Jacobs, F., The role of the European Court of Justice in the protection of the environment, *Journal of Environmental Law* 2006, p.185
4. Koppen, I., The role of the European Court of Justice in the development of the European Community environmental policy. European University Institute Florence, Working Paper 92/18. Florence 1993
5. Krämer, L., *European Environmental Law Casebook (27 commented cases)*. London 1993
6. Krämer, L., *Casebook on EU Environmental Law (50 new commented cases)*. Oxford 2002
7. Micklitz, H. and R. Norbert, (eds): *Public interest litigation before European courts*. Baden-Baden 1996
8. Sands, P., The European Court of Justice – an environmental tribunal? In: H.Somsen (ed.): *Protecting the European environment: enforcing E.C. environmental law*. London 1996, p.23
9. Ward, A., *Judicial review of environmental misconduct in the European Community: Problems, prospects and strategies*. *The Yearbook of European Environmental Law* 2000, p.331.