



9.12.2010

NOTICE TO MEMBERS

Subject: Petition 1501/2008 by Dionisia Avgerinopoulou (Greek), and 3 co-signatories, on failure to enforce EU legislation in connection with a mining operation on the Greek island of Milos

1. Summary of petition

The petitioner refers to a long series of violations of EU legislation in connection with the intensive mining operation being carried out by the multinational concern S & B Industrial Minerals on the Greek island of Milos. The petitioner considers that the necessary environmental impact assessment was not carried out, and that the mining operation is taking place in areas on the Natura 2000 list. She also mentions that waste from the mining, including toxic waste and heavy metals, is discharged straight into the sea, and that the islanders are exposed to particulate pollution, leading to serious eye and respiratory complaints. Since the mining operation is having negative effects on the landscape, the environment and historic monuments, it also affects the island's tourist industry. The petitioner therefore calls on the European Parliament to follow up this serious matter with a view to preventing further devastation of the environment and damage to public health on the island of Milos.

2. Admissibility

Declared admissible on 13 March 2009. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 7 July 2009.

The petitioner has already complained to the Commission on the same subject (letters of 14 August 2008 and 6 October 2008). Contrary to what she maintains, however, her complaint was not submitted ‘without success’: it has been officially registered by the Commission in accordance with the procedures in force. The facts of the case are still being investigated; the complaint has not, therefore, been rejected.

The Commission has the following comments to make about the Directives that the petitioner believes to have been infringed:

*Water Framework Directive (Directive 2000/60/EC)*¹

The Commission keeps the implementation of this Directive carefully under review, specifically with reference to the time-frames. For example, in a judgment handed down on 31 January 2008 (Case C-264/07) Greece was found to have infringed Articles 5(1) and 15(2), but it has since complied with the Court’s ruling. Regarding the provisions mentioned by the petitioner,

- as regards Article 8, an infringement procedure has begun.

- as regards Articles 10, 11, and 13, the obligation to draw up management plans will lapse at the end of 2009, and the obligation of implementing the programmes will cease to apply at the end of 2012.

*Bathing Water Directive (Directive 2006/7/EC)*²

On the basis of the information supplied, no infringement has been established.

Waste Directives

‘Horizontal’ infringement proceedings have been instituted on this subject (Cases C-502/03 and C-286/08) in order to make Greece comply with Community law.

*Directive 2004/35/EC on environmental liability*³

The complaint does not mention specific facts. Damage has to be concrete and quantifiable, and a causal relationship has to be established between an instance of damage and those identified as the polluters.

*Directive 96/62/EC on ambient air quality assessment and management*⁴

Ambient air quality assessment and management is indeed the subject of this directive; on the

¹OJ L 327, 22.12.2000, p. 1.

²OJ L 64, 4.3.2006, p. 37-5.

³OJ L 143, 30.4.2004, p. 56-75.

⁴OJ L 296, 21.11.1996, p. 55-63.

other hand, the Directive does not relate specifically to physical installations.

Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment

Under this Directive the Commission cannot bring its influence to bear when national authorities decide whether or not to carry out a project; nor can it check on the substance of an impact study or the environmental stipulations approved (except where the judgement of the Member State concerned is manifestly faulty).

Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora¹

No information has been given regarding any deterioration of breeding sites (Article 12(1) or the effect on the integrity of the site (Article 6(3) and (4)).

Directive 2006/11/EC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community²

This Directive may have been infringed.

Conclusion

The conclusion to be drawn from the foregoing is that Community legislation might have been infringed, albeit in one case only, the legislation in question being Directive 2006/11/EC; the Commission thus thought fit to register the complaint. The petitioner has, moreover, been informed accordingly.

The information supplied is still being assessed, not least with a view to determining whether Directive 2006/11/EC might have been infringed; the Greek authorities will be contacted in due course. The complaint has not, therefore, been submitted 'without success'.

4. Further Commission reply, received on 9 December 2010.

As mentioned in the previous reply, it was not possible to identify any infringement of the Water Framework Directive (2000/60/EC), the Bathing Water Directive (2006/7/EC), the Waste Directives, the Directive on environmental liability (2004/35/EC), the Directive on ambient air quality assessment and management (96/62/EC), the Directive on the assessment of the effects of certain public and private projects on the environment (85/337/EEC) and the Directive on natural habitats (92/43/EEC).

However, it is possible that there may be an infringement of Directive 2006/11/EC³ on

¹ OJ L 206, 22.7.1992, p. 7-50.

² OJ L 64, 4.3.2006, p. 52-59.

³ OJ L 64, 4.3.2006.

pollution caused by certain dangerous substances discharged into the aquatic environment of the Community. As such, the Commission decided to open an infringement file and to request additional information from the Greek authorities in a letter dated 23 June 2009. The Greek authorities replied in several letters.

After analysing these responses, the Commission concluded that no infringement could be identified. In a letter dated 28.1.2010 the complainant (who is also the petitioner) was informed of these conclusions and of the decision taken by the Commission to close the infringement file, and was invited to forward any comments within 30 days. The complainant informed the Commission that she intended to respond to this letter but asked for additional time (until the middle of March), which the Commission granted.

The complainant eventually responded on 27.5.2010 and contested the closure of her complaint. In the meantime, the Commission was notified about two cases before the Greek Council of State involving the same subject and submitted by the same clients as those represented by the complainant in the complaint that she had submitted to the Commission.

In a letter dated 16.09.2010 the complainant was informed that the Commission was going to close her complaint because a parallel procedure was ongoing before a national court and she was invited to contact the Commission once again once the court had ruled on the two cases. The Commission closed the complaint on 24 November 2010.

It should be noted, as reiterated by the Court on numerous occasions (e.g. ruling of 19.1.2010 in Case C-555/07, paragraph 48), that the national courts are also capable of interpreting national law in the light of European Union law in order to ensure that the latter is applied:

It follows that, in applying national law, the national court called on to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in question, in order to achieve the result pursued by the directive and thereby comply with the third paragraph of Article 288 TFEU (see, to that effect, von Colson and Kamann, paragraph 26; Marleasing, paragraph 8; Faccini Dori, paragraph 26; and Pfeiffer and Others, paragraph 113). ‘The requirement for national law to be interpreted in conformity with European Union law is inherent in the system of the Treaty, since it permits the national court, within the limits of its jurisdiction, to ensure the full effectiveness of European Union law when it determines the dispute before it (see, to that effect, Pfeiffer and Others, paragraph 114)’ (paragraph 48 of the above judgment).

As a principle, the Commission considers that it may not take the place of national judges, whose job it is to ensure the correct implementation of EU law. **In this connection, the Commission notes that Parliament adopts the same stance, as set out in its resolution of 6 July 2010 on the deliberations of the Committee on Petitions during the year 2009 (2009/2139(INI)), recital K of which reads as follows:**

‘whereas citizens should, in particular, be made aware that – as recognised by the European Ombudsman in the decision of December 2009 closing the inquiry into complaint 822/2009/BU against the Commission – national court proceedings are part of the process of implementing European legislation in the Member States, and that the Committee on Petitions cannot deal with issues subject to national court proceedings or review the outcome of such

proceedings'.