

# THE ROLE OF THE EUROPEAN COURT OF JUSTICE IN THE MANAGEMENT AND PROTECTION OF WETLANDS: A EUROPEAN STATES CASE STUDY

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## ABSTRACT

*This study deals with the role of the European Court of Justice in the management of wetlands. It presents the legal framework and management of this protection within the jurisdiction of the Court in wetland matters. It then offers the judicial practice before the Court in the wetlands field and describes the nature of disputes, including cases where the Court is called upon to take interim measures.*

**Keywords:** Protection, European Court of Justice, European Union, Management, Wetlands.

## INTRODUCTION & LITERATURE REVIEW

The environment has received late attention by international law, unlike other issues for which the United Nations has long since established international conventions such as human rights. Despite the close link between the environment and human rights, international law did not resolve it quickly. The reason for this is the fear of states at the beginning of the United Nations that the international protection of the environment may threaten the sovereignty of states over their territories. However, these concerns disappeared after the countries realized the global nature of environmental damage, making the particular environment necessary for international regulations. The issue of the environment has appeared before the international courts several times, the most important of which was the International Court of Justice, whether in connection with disputes between states, for example the judgment of the ICJ dated in 20 December 1974, or on the occasion of the advisory role played by the court, for example we note the ICJ Advisory Opinion dated in 8 July 1996 about the legality of the threat or use of nuclear Weapons.

There are currently more than 500 international agreements dealing with the environment; most of them are regional. These agreements vary between treaties that protect the air, such as the United Nations Convention on Climate Change and the Kyoto Protocol, and others related to living organisms such as the Rio Convention on Biological Diversity. There are also other conventions that protect the maritime domain's environment, such as the Convention on the Law of the Sea, and those that preserve the ecosystem, such as the Ramsar Convention on Wetlands. The Wetlands Convention is the first international treaty in the environment where the international community has succeeded in reviving away from the Cold War conflicts. It is important to note the close link between wetlands and sustainable development (Dugan, 1990).

The international community is currently seeing a trend towards multilateralism in the regional context, as several regional international organizations have emerged competing with

the United Nations in its goals. The United Nations Charter permits this. Among the regional international organizations that have witnessed a remarkable development at the institutional level is the European Union. Its establishment treaty stipulates respect for the environment. The same treaty has stated its policy in the environment based on preserving, protecting, and improving the environment's quality, protecting people's health, cautious and rational use of natural resources, and promoting international efforts to confront regional and global environmental problems.

The European Union contains a vital mechanism to ensure the implementation of the texts regulating the Union and what is issued by its constituent institutions. This mechanism is represented in the European Court of Justice, where it plays an essential role in protecting wetlands by examining the extent to which member states adhere to EU directives related to wetlands (Janssen et al., 2005). This research raises a problem: What is the effectiveness of role of the European Court of Justice in protecting wetlands? (Garrett et al., 1998).

## **MATERIAL AND METHODS**

This article uses the jurisprudence of the court as material support for the discussion, using a comparative lecture to see how the rules developed at the European level.

## **RESULTS AND DISCUSSION**

Wetlands are covered in the European context due to the significant role environmental societies play in preserving this type of land and the associated organisms important for biological balance (Kovács et al., 2015). These associations are pressing European governments to urge them to obtain more legal protection for them. Moreover, it is noted that national policies, including agriculture, play a fundamental role in influencing the future of wetlands (Baldock, 1984). Furthermore, the issue of wetlands is closely related to changing the economy of ecosystems (Russi et al., 2013).

Most European countries have ratified the Ramsar Convention, including those that emerged after the Ramsar Convention date, such as Albania, Bosnia, Cyprus, and the Republic of Moldova.

Regional international organizations within the European framework play a prominent role in this field. For example, the European Union has strong institutions working to integrate international environmental law into the European framework. This is done through directives issued by the European Parliament and Council, such as Directive No. 47/2009 related to conservation on wild birds. The second paragraph of Article IV stipulates that the European Union countries should emphasize wetlands of international importance. This directive replaced Directive No. 79/409 issued by the European Group on April 2, 1979, which in turn included paragraph 2 of Article IV, the same protection for wetlands, and was amended by Directive 49/79 on July 29, 1997. There is also protection for wetlands through Directive 92/43 issued by the European Council of May 21, 1992, regarding preserving natural habitats and wild fauna and flora (Schoukens & Cliquet, 2016).

The protection of wetlands also falls within the framework of Directive on Water No. 60/2000 issued by the European Parliament and Council of October 23, 2000. Paragraph 23 indicates the need to establish common principles to coordinate member states' efforts to improve the quality and quantity of water protection in the European Community and strengthens sustainable water use to control transboundary water issues. The same paragraph

indicated the need to protect aquatic ecosystems, terrestrial ecosystems, and wetlands that depend directly on them, as well as to maintain and develop potential water uses in the European Community.

Article 1 specifies the same directive's objective: to develop a framework for protecting inland surface waters, mobile waters, coastal waters, and groundwater, which prevents further degradation, and maintains and improves the state of aquatic ecosystems, terrestrial ecosystems, and wetlands that depend on them directly.

Wetlands are also concerned with the content of Article 19 of the European Regulation No. 797/85 related to improving the effectiveness of agricultural structures of March 12, 1985. As the article mentioned above, the necessity of coordinating agricultural efforts with environmental requirements and allowing countries to adopt special national regulations for environmentally sensitive areas, represents an ecological and natural interest. This regulation also grants aid to farmers who exploit these sensitive areas to preserve and improve the environment. The agricultural product must be compatible with the environmental needs of the relevant sensitive area. Countries are obligated to inform the European Commission of the special regulations adopted with the exposed regions' list.

The European Parliament previously issued a resolution on the rational use and preservation of wetlands on December 12, 1996. It called the committee to enumerate all European wetlands and map their habitats based on a consistent database. This database and census are among the primary conditions for rational use. Moreover, this resolution urged the committee to establish a network that includes wetlands within the framework of the Nature2000 project. This decision indicated that this system had been installed within a regional framework related to the Mediterranean region (MedWet). The decision established a European information system committed to technical and financial support, which the census may achieve within four years (Jantke et al., 2011).

The decision affirmed the committee's call to consider natural wetlands as irreplaceable, especially those that meet the criteria and are classified as wetlands of international importance under the Ramsar Convention. Also included are those designated as specially protected areas with the Nature2000 project while respecting previous obligations, in Article 6 of the Habitat Directive and following the Directive of Wild Birds, or their classification as specially protected areas following the habitat directive, the committee prohibited without exception any destruction or degradation of these areas for any reason whatsoever, according to the community and international law and the principle of preventive protection (Courtney, 2002).

The committee called to intensify the efforts to inform the public and officials to make decisions related to wetlands' value and functions based on scientific research's latest developments. The committee considered training "*wetland managers*" and specialized technicians who can advise local authorities to adopt rational use decisions. Wetland conservation and conservation should be encouraged by the European Union. Thus, it is noted that the European Union is one of the distinguished organizations in the field of the legal framework for protecting wetlands, unlike the African Union.

### **The Judicial Mechanism for Protecting Wetlands in the European Context**

The Court of Justice of the European Union, which replaced the European Community Court, plays an essential role in protecting wetlands by monitoring compliance with European Parliament directives related to wetlands. The jurisdiction is convened for the court to examine the extent of fulfillment of obligations by states and the European Commission is the party

facing the states. It should be noted that in international law, it is rare that international organizations enjoy the right to litigate before international courts. It is important to note that the binding force of judgments of the court of justice is established under Article 171 of the Maastricht Treaty. This article imposes on the Member States of the European Union the obligation to take all measures involved in the execution of judgments.

The practice before this court indicates that some European countries failed to fulfill their obligations resulting from the directive as mentioned above, such as the European Commission case against the Kingdom of Belgium, and the European Commission case against the Kingdom of Spain dated August 2, 1993, and June 28, 2007. The court had previously decided on a European Commission case against Greece, dated 25 October 2007, directly related to wetlands.

In addition to the protection established within the European Union framework, there is another protection within the framework of the European Council, which is reflected through the European Network of Biosphere Reserves approved by the Committee of Ministers on March 15, 1976, under Resolution 76/17. This protection includes wetlands. It is evident that this protection is the ultimate form of protection, because it involves mandatory protection by states, which is what African countries and other regions in the rest of the world lack.

### **The Formal Aspects of Raising the Jurisdiction of the Court of Justice in the Field of Wetlands**

The court's jurisdiction over the member states of the European Union shall be held at the request of the European Commission against one of the member states (Annull, 1999), and the European Commission shall have the capacity of the plaintiff. The state concerned with the request is considered the defendant.

The content of the committee's request relates to the extent to which the directives that may be related to wetlands are fulfilled, which is represented in No. 47/2009 related to the conservation of wild birds. Also, the court sometimes discusses the issue of wetlands when it watches over the implementation of other directives such as in the Directive on Waste dated July 15, 1975.

As an example and clarification, the European Commission's case against Ireland on April 26, 2005, is mentioned. The reasons for this case are due to the commission receiving three complaints regarding Ireland. The first concerns the disposal of construction and demolition waste in a wet area in the city of Limerick, Complaint No. 4705/1997, and the second concerns the storage of organic waste in ponds in Ballard, Vermoy, and Cork department, and disposed of this waste by a private operator without a permit, Complaint No. 4792/1997. The third complaint is related to sun-dried waste disposal in Pembrokestown, Whiterock Hill, County Wexford, by a private operator without a license, Complaint No. 4847/1997. This are in addition to other complaints regarding which the committee issued a reasoned opinion. Still, Ireland did not comply with it, which led the committee to resort to the European Court Justice. The court held that landfills destroyed sensitive wetlands of particular ecological importance, including causing these areas to change, reducing their space, and causing several critical environmental impacts. The court ruled that Ireland had not fulfilled its obligations under the waste directive dated 15 July 1975.

There are many reasons for the European Commission's resort to the Court of Justice vis-à-vis states and practice indicates that the dispute between the Commission and the states relates to the failure to fulfill the European Union's obligations.

According to Article 226 of the Maastricht Treaty, if the European Commission considers that one of the member states has violated its obligations of the treaty, it must issue a reasoned opinion and allow the concerned state to make its observations. If the concerned state does not reach consensus on the idea of the commission within a period set by the committee itself, it may inform the court of that.

The court had previously decided to reject the European Commission's case against Romania on April 14, 2011, because this Commission changed its complaint from not submitting a list of private protected areas, to a shortage in the area of private protected areas. The court considered that the Commission's case against Romania did not meet the formal requirements. Romania is not fully vindicated because it did not present the national list of specially protected areas required under Articles 4 (1) and (2) of the Birds Directive. The committee found that the member state had failed to fulfill its obligations by not specifying the appropriate hosting areas and sending an official notification letter.

The logical consequence of giving the European Court of Justice the power to hear disputes between the European Commission and states is to provide legal value and mandatory character to directives related to the protection of wetlands. Because Member States who fail to fulfill the obligations arising from Directive No. 47/2009 on the conservation of wild birds, are in violation of the agreement with the international organization.

### **Disputes Related to the Mismanagement of Wetlands**

There have been disputes in which the committee considered that the concerned countries violated their obligations towards wetlands in water management. This is evident in the European Commission's case against Greece and was related to the reasons for Greece's failure to implement Directive 92/43 related to preserving natural habitats and Directive No. 91/271 related to wastewater treatment in urban areas. The case concerns Lake Koroneia, which is considered a wetland according to the Ramsar Convention concept and is included in the specially protected areas following the European directive bearing the number Special Protection Zone GR 1220009. Still, Greece did not guarantee protection for it, which prompted the committee to bring its grievance before the court.

The court ruled on February 7, 2013, that Greece had not taken the necessary measures to prevent the degradation of the natural habitats and habitats of the species in the Special Protection Zone and had not set up a system for collecting and treating urban wastewater in the city of Langadas. So it had failed, respectively, to fulfill its obligations under Article 6 (2) of Council Directive No. 92/43 EEC of May 21, 1992. This concerned the conservation of natural habitats, wild fauna, and flora, which must be understood in conjunction with Article 7 of the same directive and its obligations under Articles 3 and 4 of Council Directive No. 91 / 271 EEC of May 21, 1991, on urban wastewater treatment.

### **Disputes Related to Protected Spaces within Wetlands**

These disputes revolve around those member states' failure to include wetlands in terms of space as the committee estimates that countries have designated less than necessary. An example of this is the dispute between the European Commission and territory Greece on October 25, 2007, based on a breach of paragraph 2 of Article 4 of Directive No. 79/409.

The reasons for this issue are because, according to the committee, in 2001 Greece did not classify all the important areas for bird conservation that were ranked in the IBA 2000. Those

areas were determined, based on scientific criteria, that it defines and clarifies, to include 186 essential areas for bird conservation, with a total area of 3320027 Hectares, representing 25.2% of the national territory, which were classified as Special Protected Areas within the meaning of Directive 79/409.

This case raised several legal problems in proving scientific information related to wetlands in case of disagreement between the European Commission and the countries. Still, in this case, the court recognized that the information contained in IBA 2000 provides information that forms a reference for assessing the extent to which states are fulfilling the inclusion of lands under protection.

### **The Commitment to Updating Scientific Information Related to Wetlands**

The European Court of Justice decided that updating scientific data related to wetlands and particularly protected areas is essential to fulfilling the obligations arising from the Birds Directive to protect birds that represent the common heritage of the European Community. The court indicated this in the Commission's case against Spain of 28 June 2007. It explained that recent information must be used when assessing protected areas that include threatened species in the reasoned opinion issued by the Commission to the countries. And it affirmed this in the Committee's case against Greece in its judgment dated October 25, 2010.

### **The Role of Interim Measures Before the European Court of Justice in Protecting Wetlands**

The European Commission can ask the court to take provisional measures before deciding whether to stop new actions threatening private protected areas and wetlands representing a common European heritage. The basic principle is that the cases before the court do not have standing effects. However, in particular circumstances, the court has the right to order the cessation of disputed works. The court has the right to request temporary measures regarding the cases under consideration.

The practice indicates that the European Commission had previously reported to the court to request such measures, which is evident in the European Commission case against Poland in 2007, where the European Commission asked the court on 07/30/2007 to take interim measures to urge Poland to stop a road project. Its length is 17.1 km and passes over the Rusboda Valley, which is considered among the particularly protected areas in the European context. The road project passes over a unique wetland area on the European scale.

However, on October 3, 2007, the committee decided to waive the request due to Poland's guarantees that included abandoning the project and freezing it until the issuance of a ruling. Accordingly, the court agreed on January 25, 2008, to cancel the request for temporary measures from the court record.

It should be noted that urgent judicial measures are the best tool for preventing or minimizing wetland degradation, but that mechanism is not available at the global level. For example, the International Court of Justice is unable to intervene in the area of wetlands because its jurisdiction does not extend to wetlands. The Ramsar Convention does not refer to the jurisdiction of the Court in respect of disputes relating to it.

## Wetland are a Common European Heritage

Some international conventions use the term common heritage of humanity. However, the Ramsar Convention does not explicitly include the consideration of wetlands within the field of humanity's common heritage, as is the case in the Convention on the Law of the Sea, which considered some marine areas to be the common heritage of humanity. Still, the European Court of Justice's jurisprudence dedicated the common heritage on a regional scale, i.e., the common European heritage. This is shown by the court's judgments in the Commission's case against Spain of June 28, 2007, referred to above, and the Commission against Ireland, where this concept acquires ambiguity in international law. This concept also appears to include wetlands in the national legislation that established the concept of national heritage.

### CONCLUSION

This research concludes that the European Union possesses effective legal means to integrate national environmental law provisions into European law, through directives issued by the European Parliament and Council. A robust legal framework also distinguishes the institutions of the European Union. The practice has shown that it exercises all of its legally authorized competence in protecting wetlands. The European Court of Justice has enriched the legal field with useful jurisprudence in wetlands representing a judicial reference for national and even international courts in the future.

Giving the commission the right to appeal before the European Court of Justice allows the court to debate international environmental law provisions indirectly. When the court discusses the European directives that are the source of international conventions, it indirectly discusses international agreements' requirements. It also appears in the court rulings and orders, which contain explicit and clear references to international agreements, including the Ramsar Convention. This paper recommends a recommendation to the African Union actors to consider the European Court of Justice experience in the field of protecting wetlands.

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