



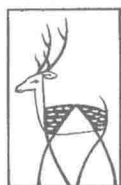
EU CASEBOOK ON **Environmental Law**

Ludwig Krämer

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PROFESSOR DR LUDWIG KRÄMER



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CASEBOOK ON EU ENVIRONMENTAL LAW

PREFACE

The outstanding role of European courts—the Court of Justice and the Court of First Instance—in the making of European law has often been underlined. It cannot be rated high enough, also, and in particular, when the increasing globalisation draws the attention to the activity of other international organisations and to the role which the law plays in that process. “The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed”: it would be good to read these simple words of Article 220 EC Treaty in the UN Statutes, the treaties on the World Trade Organisation or other international treaties.

This book deals with a section of the comprehensive activity in particular of the Court of Justice, which is environmental law. In environmental policy, law has a particular importance, for two main reasons: on the one hand, the environment does not have organised vested interest groups which could bring its interest to the political discussions and could defend it towards other, in particular economic interests. On the other hand, the environment (the biosphere) can well survive without humans, but humans cannot survive without the environment. In view of this, law has the task to pour the declamations, principles and orientations on environmental protection into a legal form and to guarantee the preservation of the environment as good as possible. It is at least due to the Court of Justice that despite all directives and regulations, programmes and plans, solemn declarations, charts and conventions the state of the environment deteriorates not only world-wide, but also within Europe and the European Union. Indeed, the Court has, overall, broadly interpreted the rules on the protection of the environment, deciding in favour of the environment where this was possible and innovated in order to improve the existing rules.

For this book, 50 judgments on the protection of the environment were selected. In each case, there is a short presentation of the facts and of the procedure. This part is followed by excerpts from the Court’s judgment. In order to facilitate reading, intermediary titles were inserted into the judgment which were set in brackets, whenever they did not stem from the Court itself. The subsequent commentary places the judgment into the legal, environmental and political context and discusses the reasoning of the Court. The cases deal with basic issues of the EC Treaty (cases 1 to 9), horizontal legal issues (cases 10 to 18), water protection and air pollution (cases 19 to 25), products and noise (cases 26 to 32), nature protection (cases 33 to 38), waste management (cases 39 to 45) and procedural questions (cases 46 to 50).

Particular importance was given to recent judgments: 43 of the 50 judgments were made in 1996 or later; the oldest judgment comes from 1991. With one exception, judgments of 2001 and 2002 could not be incorporated any more. Also, legal developments of this period could only be mentioned in parts only.

The book addresses all persons who, in one way or the other, deal with environmental law, in particular legal practitioners, researchers, law students, academics and administrators. Its objective is to increase understanding and comprehension of the reasoning of the Court, but also of that of the European institutions and to give ideas how, with the means of law, the environment could be better protected. My professional activity as official in the department of the environment of the European Commission imposed, on many occasions, reserves in the assessment of facts. Nevertheless, I hope that readers will recognise my own opinion throughout the text.

I consider the environmental jurisdiction of the Court to be very positive and important for the environment; its weight in the political and administrative day-to-day struggle cannot easily be overestimated: the Court is an anchor in the storm, a rock in the sea of interests that are hostile to the environment. Also those commentaries which less agree with specific judgments are based on this evaluation. The reason why this book, overall, rather follows a somehow critical line lies in the fact that only a critical discussion can contribute to the creation of a European public (legal) opinion; nobody is served with base flattery. Furthermore, the critical remarks aim—and I hope that this becomes clear, too—not so much at the jurisdiction, but rather at the law, i.e. the European environmental law, as it is being formed, made, treated and applied.

It is a paradox that at present everybody within the European Union favours an appropriate protection of the environment, a sustainable development, a high level of protection and a full application of the precautionary principle: however, the devil is always in the detail. As long as the fascination lies in the sheer number of environmental regulations or court decisions and the content and application of the different environmental regulations are not examined in detail, there will be an increasing number of measures for the environment—and a slow, but progressive decrease of the protection of the environment. This book tries to make lawyers reflect on the protection of the environment.

Ludwig Krämer
Brussels,
1 July 2002

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