

EUFJE Conference 2019
Helsinki, 13-14 September 2019
The role of science in environmental adjudication
Questionnaire

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Questions

1) Mandate of the court to review techno-scientific matters.

a/ The Chapter 21 of the Judiciary System Act establishes the status of expert witnesses.

An expert witness shall carry out expert assessments. All state bodies, legal entities and citizens having materials required for an expert assessment shall be held to provide access thereof to the expert witness concerned in accordance with the level of access to classified information of the expert witness, as well as to provide the assistance required for the attainment of the expert assessment objectives.

An expert witness shall be appointed by the body which has assigned an expert assessment from the respective list of specialists approved to serve as expert witnesses. Where needed, a specialist who is not on the respective list, may also be appointed as expert witness. In the event of complex or large-scale research, the body concerned may appoint more than one expert witness. In the discharge of its functions, the expert witness shall be identified by a certificate issued by the body which has assigned the expert assessment.

b/ In accordance with the provision of Article 195 of the Civil Procedure Code of the Republic of Bulgaria expert shall be appointed upon a request of the party or exofficio, where for some aroused from the lawsuit matters is needed special knowledge in the field of science, art, crafts, etc. The court may appoint more than one expert, if this is necessary in view the circumstances of the lawsuit. In the ruling by which the court appoints the expert, shall be stated: the subject-matter and the task of the expertise; the materials which shall be provided to the expert; the name, education and qualification of the expert. The court shall give an appropriate period for preparing the conclusion. The expert shall notify the court, if he cannot prepare the conclusion within the determined period, and shall state what period he needs.

The court shall remind the expert about his liability for giving an untruthful conclusion. The expert shall state orally his conclusion. The parties may ask questions on order to clarify the conclusion. In event of contestation of the conclusion, the court may appoint another or more than one experts. Contestation may be done during the hearing.

The additional conclusion shall be assigned, if the conclusion is not sufficient, full and clear, and a second conclusion – if it is not grounded and a doubt in its correctness arises.

The court shall not be obliged to accept the conclusion of the expert and shall discuss it together with the other evidence to the lawsuit.

In event of discord between experts, each group shall state their separate opinions. If the court cannot take decision on the discord, the court shall require from the same experts additional examinations or shall appoint other experts.

c/ By virtue of the provision of Article 221 of the Administrative Procedure Code the higher court in Bulgarian jurisdiction (supreme court) can investigate scientific questions, and/or review the scientific findings of lower courts. The Supreme Administrative Court shall leave in effect the judgment or shall reverse the judgment in the contested part thereof if the said judgment is incorrect. Where the judgment is inadmissible, the Supreme Administrative Court shall invalidate the said judgment in the contested part and thereupon shall dismiss the case, shall refer the case back for re-examination, or shall forward the case to the competent court or authority.

Where the administrative authority, acting with the consent of the rest of the respondents, withdraws the administrative act or issues the act which the said authority has refused to issue, the Supreme Administrative Court shall invalidate the judgment of court rendered on the said act or refusal as inadmissible and shall dismiss the case.

Where the judgment is null, the Supreme Administrative Court shall declare the nullity thereof in whole and if the case is not dismissible, shall refer the said case back to the court of first instance for rendition of a new judgment.

Where settlement has been reached before the Supreme Administrative Court, the court shall confirm the said settlement by a ruling whereby the judgment of court shall be invalidated and the case shall be dismissed.

Powers of Supreme Administrative Court upon Reversal of Judgment

When reversing the judgment, the Supreme Administrative Court shall adjudicate in the case on the merits.

The Supreme Administrative Court shall refer the case for re-examination by another panel of the court of first instance where:

1. the Supreme Administrative Court finds a material breach of the rules of court procedure;
2. facts must be established, for which collection of written evidence is not sufficient.

d/ Evidence derived from geospatial (GIS) technologies (such as satellite images, aerial photography, drones, etc.) are relied on by an expert and are included in the evidence in the case on the basis of the forensic and technical expertise.

2/ When do you gather expert advice?

a/ Within the limits of the subjective judgment of the court is the distinction of the relevant issues between technical/scientific questions and legal questions in fact-intensive disputes, where science and law are closely interlinked in the underlying legal rules and concepts.

b/ The court shall not be obliged to accept the conclusion of the expert and shall discuss it together with the other evidence to the lawsuit.

c/ The administrative court shall not limit itself to consideration of the grounds stated by the contestant but shall be obligated, proceeding from the evidence presented by the parties, to

verify the legal conformity of the contested administrative act of all grounds covered herein: lack of competence; non-compliance with the established form; material breach of administrative procedure rules; conflict with provisions of substantive law; non-conformity with the purpose of the law. The court shall declare the nullity of the act even if the court has not been approached with a motion to do so.

3/ Rules of expert appointment

No expert witness who is interested in the outcome of the proceedings or has relations with any of the parties to a case that give rise to justified doubts in his impartiality may be appointed to carry out an expert assessment.

Lists of specialists approved to become expert witnesses shall be drawn up in the judicial area of each regional and administrative court as well as for the specialised criminal court. The Supreme Court of Cassation, the Supreme Administrative Court, the Supreme Prosecution Office of Cassation, the Supreme Administrative Prosecution Office and the National Investigation Service shall approve separate lists for the needs of their business, if so required. Where the needs of a particular judicial system body so require, it may appoint an expert witness on a list in another judicial area. The lists shall be public.

Ministries, agencies, establishments, municipalities, professional and other organisations and scientific institutes shall make proposals for the inclusion of specialists on the lists of expert witnesses. Proposals for inclusion on the lists shall be made to the chairperson of the respective court.

The proposals shall set out in writing the full name of the specialist, his home address, contact phone and data about his education, work place, position held, length of service record, his record as expert witness and his additional qualifications.

The terms and procedure for the conduct of forensic medical, forensic psychiatric and forensic psychological assessments, including the payment of the relevant costs to medical treatment facilities, shall be determined by an ordinance issued by the Minister of Justice, the Minister of Foreign Affairs and the Minister of Health, in coordination with the Supreme Judicial Council.

The lists shall be endorsed by a commission composed of the chairperson of the appellate court or a judge thereby designated, the chairperson of the appellate specialised criminal court or a judge thereby designated, the appellate prosecutor or a prosecutor thereby designated, the head of the appellate specialised prosecution office or a prosecutor thereby designated, the chairperson of the regional court, the chairperson of the specialised criminal court, the regional prosecutor, the head of the specialised prosecution office and the chairperson of the administrative court.

The endorsed lists shall be sent to the Minister of Justice for publication in the State Gazette and on the Internet.

The Minister of Justice in concert with the Supreme Judicial Council shall issue an Ordinance concerning: 1. The procedure and terms for making proposals for inclusion and for

modification of the lists of specialists approved to serve as expert witnesses, 2. The conditions that the specialists approved as expert witnesses must fulfil, 3. The terms and procedure for calculating the remuneration of expert witnesses. This Ordinance shall be published in the State Gazette.

b/ The appointed expert shall be discharged from the assigned task, if he cannot perform it due to lack of qualification, to illness or another objective reason he did not prepare the conclusion in time.

The additional conclusion shall be assigned, if the conclusion is not sufficient, full and clear, and a second conclusion – if it is not grounded and a doubt in its correctness arises.

c/ The court shall not be obliged to accept the conclusion of the expert and shall discuss it together with the other evidence to the lawsuit.

4/ Evidentiary issues: standard and burden of proof

The administrative authority and the persons whereto the contested administrative act is favourable must establish the existence of grounds of fact specified in the said act and the fulfilment of the legal requirements upon the issuance thereof.

Where a refusal to issue an administrative act is contested, the contestant must establish that the conditions for the issuance of the said act have existed.

The evidence duly collected in the proceeding before the administrative authority shall have force before the court as well. The court may question as witnesses the persons who have provided information to the administrative authority and the experts solely if the court finds it necessary to hear the said persons directly.

On a motion by the parties, the court may collect new evidence as well which are admissible under the Code of Civil Procedure. The court may also act on its own initiative when it appoints experts and orders inspection and certification.

The parties shall be obligated to cooperate for establishment of the truth.

The court shall be obligated to cooperate with the parties for rectification of any errors in form and any ambiguities in the statements of the parties and to instruct the said parties that certain circumstances relevant to the case do not furnish evidence.

The court shall pronounce on the motions for evidence in camera. Any such motions may furthermore be granted at the first hearing of the case, should the court find it necessary to hear also the oral explanations of the parties on the evidence adduced thereby.

b/ In the case, at the request of the challengers, a forensic environmental experiment was set up to answer the following questions:

1. Determining the suitability of the used Oracul Traffic software to calculate the impact on ambient air quality and the determination of the territorial scope and of the ground concentrations in relation to the EIA of the Investment Offer for Ruse - Veliko Tarnovo

motorway - especially in the part concerning the passage of the highway over terrain / bridge or viaduct /. An example of the latter is in Division II, the twelfth subdivision, where in the combined version of km. 113 + 440 completes a bridge with a length of 1117m, overcoming 70m. and with pillars up to 45m.

2. Determine the suitability and realism of the data used in software calculations and their compliance with the EIA and its annexes, ie data on expected traffic by vehicle type, wind direction and speed, etc. - only for section II Byala - Veliko Tarnovo twelfth subdivision of km. 106 + 000 to km. 116 + 000 of the combined version.

3. Establish compliance or discrepancy in the results obtained from the software after using the data from item 2 against the published results in Annex V.1.2-6.1.2.2.3.1.12 of the EIS.

4. Does the "Diffusive Module" allow the correct version of the Wind Rose parameter to be used - the sum of 100% of the percentages for the eight possible wind directions?

5. Has a software audit been carried out on Traffic Oracle or any independent verification of the accuracy of its calculations?

5/ Rules of evaluating expert evidence: standard (intensity) of review

a/ In accordance with Art. 203 of the Code of Civil Procedure, in event of discord between experts, each group shall state their separate opinions. If the court cannot take decision on the discord, the court shall require from the same experts additional examinations or shall appoint other experts.

b/ The court can review the scientific assessments and justifications made by a competent domestic authority (by conducting a de novo review of the evidence).

c/ The applicable review standard for the study of scientific the evaluations of the national authorities include both checking of "obvious mistakes" and the consistency / consistency / consistency of their scientific conclusions, including investigating the scientific validity and factual accuracy of the evidence, as well as reviewing the procedural aspects of science decision-making.

6/ The role of science and technology in the courtroom – an overall assessment

a/ I share the view that the difficulties in scientifically identifying the facts are leading in defining the challenge in the environmental decision.

b/ I believe that the internal rules for expert participation and judicial control are well established and allow for full supervision of legality.

c / European environment policy is one of the most up-to-date and discussed policies at global and international level. This is because the environmental problems continue to be one of the

most serious modern challenges facing humanity. Environmental policy has become an essential part of the development of the European Union (EU). Throughout this time, this policy has changed many times and as a result, the European Union today has one of the most comprehensive environmental laws in the world. Despite all the efforts made at EU level, it still faces many problems in this area.

d) I think it is necessary to improve the scientific engagement of judges. The possibility of extending rules for scientifically establishing facts would help the court. Enhancing the competence of the judiciary and participation in training will lead to higher capacity building.

7/ Case study

Wildlife trafficking is one of the most profitable criminal activities worldwide. It has serious effects on biodiversity and a negative impact on the rule of law due to its close links with corruption. It plays an increasing role in financing militia and terrorist groups.

The EU is a destination, source and a transit region for wildlife trafficking. On all these counts, it has a pivotal role to play in eradicating this illegal trade.

International legislation

Convention on International Trade in Endangered Species of Wild Fauna and Flora Signed at Washington, D.C., on 3 March 1973 Amended at Bonn, on 22 June 1979 Amended at Gaborone, on 30 April 1983, better known as CITES or the Washington Convention.

It defines the regimes and rules for trade and border crossing of endangered species of animals and plants in the world. Regulation is through a system of certificates and permits. Subject of the Convention are over 30 000 species.

CITES works by making international trade in specimens of selected species subject to certain controls. These include a licensing system that requires the authorization of the import and (re-)export of species covered by the Convention.

EU

The European Union, as a collective body, applies CITES through the so-called Regulation on the protection of species of wild fauna and flora by regulating trade therein and related regulations. Depending on their conservation status, threatened species are divided into four Annexes to the Regulation: A, B, C and D. The species with the highest degree of threat and protection are listed in Annex A, as it is forbidden to trade for profit. This Annex also covers species that are relevant to the EU, although not covered by the Convention. The rest Applications contain species or larger taxonomic groups or populations for which regulation of trade is necessary.

The European Union is one of the largest and richest markets for species subject to the Convention.

It has been established that one third of the world's legitimate trade regulated by CITES is being implemented in EU countries.

The European Union is the world's first bird import and the world's second largest importer of reptiles, reptiles and live mammals. The largest poultry markets are Spain, Portugal and Belgium. According to statistics, 35% of the birds imported in the UK are parrots and day-old birds of prey, and the amount of kept reptiles is estimated at over 5 million copies. For countries like the UK, the annual CITES trade turnover was estimated at over 80 million.

The structure of the European Union is a serious challenge for the implementation of the effective legislative control. Movement of goods from one Member State to another is free, and given that effective controls at the EU's external borders guarantee good protection for Member States. Often, however, this control is inconsistent random. At the external borders, such as Bulgaria, serious loopholes are allowed, which make all Member States vulnerable to illicit trafficking in specimens of wild fauna and flora.

Bulgarian legislation

Regulation on the protection of species of wild fauna and flora by regulating trade with them is directly applicable and binding on all EU countries, therefore in Bulgarian legislation, and in particular in the Law on Biological Diversity, issues related to the control authorities and internal trade with these kinds. The Law on Biological Diversity also defines species of animals and plants which are subject to protection on the territory of Bulgaria. The majority of these species do not fall under the provisions of CITES but trade with wild-caught wild specimens is forbidden.

In the specific case a matter of proof from a technical point of view would be that these birds were born and bred in captivity.

Technical expertise should also be assigned to prove counterfeiting of certificates.

According to Art. 84 of the Criminal Procedure Code the victim or his or her heirs and the legal persons, which have sustained damages from the criminal offence, may file in the course of court proceedings a civil claim for compensation of the damages and be constituted as civil claimants.

The application for a civil claim shall indicate: the full name of the author and of the individual against whom the claim is filed; the criminal case in which it is filed; the criminal offence which has caused the damages, as well as the nature and amount of damages for which compensation is claimed.

Civil claims in court proceedings may be filed both against the defendant in court and against other persons who incur civil liability for the damages caused by the crime.

In the event that the NGO claims property damages, a court - economic expert will be appointed to establish the amount of the claimed property indemnity.

In the case of a claim for non-pecuniary damage, the court will determine the amount in fairness.