Summer Course – 6 to 9 July 2009

"Article 226/228 EC Procedures – The Commission Perspective in Environmental Cases" – Sibylle Grohs

Day 1

Role of the European Commission

- Guardian of the EC Treaty - Article 211.
- Commission structure - role of Secretariat General, Legal Service and individual Directorate Generals (Environment).

Sources of Information on Infringements

- Complainants, non-governmental organisations, industry groups, Member States reports and Commission's own reports.

Background reference:

Role of European Parliament & Ombudsman

- Petitions Committee and right to petition - Article 194 EC Treaty
- Environment Committee
- European Ombudsman

Article 226 EC Treaty infringement procedures - Part 1

- Types of legal instrument assessed - EC Treaty Provision, Directives, Regulations, International Conventions
- Class of cases - non-communication, non-conformity and bad application
- Pre-226 investigation procedures

Day 2

Article 226 EC Treaty infringement procedures - Part 2

- Administrative steps in the infringement procedure - letter of formal notice, reasoned opinion and decision to refer case to Court of Justice. Insight into Commission decision making process.
- Reference to the Court of Justice – Pleadings (Application, Defence, Reply and Rejoinder); Role of Advocate General & Reporting Judge, Third Party Interventions, Oral Hearing and Judgement.
Background reference:
▪ Rules of Procedure of the Court of Justice:

▪ Burden of Proof – Rules of adversarial legal proceedings apply and Commission bears
the burden of proof. Case study on the application of Directive 91/271/EEC concerning
urban waste water treatment – ECJ judgement in Commission v France C- 280/02,
Advocate General Opinion in joined cases Commission v. Finland, C-335/07 and
Commission v. Sweden, C- 438/07; Commission v. United Kingdom, C-390/07.

Background References:
▪ Commission v. Netherlands C-408/97 para 15 and 16
▪ Commission v. Ireland C-494/01 para.37
▪ Commission v. Italy, C-365/97, para 84-86
▪ Commission v. Luxembourg C-32/05 para 51.

▪ Request for Interim Measures under Article 243 EC

Background References:
▪ Commission v. Italy, C-503/06
▪ Commission v. Poland, C- 193/07
▪ Commission v. Malta, C-76/08

Day 3

Procedures under Article 228 EC Treaty

▪ Pre-228 letter, letter of formal notice, reasoned opinion, decision to refer case to Court of
Justice and drawing up a penalty "fiche".
▪ Burden of Proof under Article 228

Background reference:
▪ ECJ judgements under Article 228 in environmental cases: Commission v. Greece, Case C-
387/97 and Commission v. Spain, Case C-278/01 and Commission v. France, Case C-121/07

Related issues

▪ Access to documents in infringements –

Background reference:
▪ Regulation No. 1049 regarding public access to European Parliament, Council and Commission
documents OJ L 145 pg 43

▪ Relationship with Article 234 cases
Current Commission Policy on Infringements

- Priority setting & Statistical trends
- Experience in other Directorates General of the Commission

Background references:
- Communication from the Commission – A Europe of Results – Applying Community Law COM(2007) 502 final;
- Communication from the Commission on Implementing European Community Environmental Law COM(2008)773 final;

Class Reading Materials


Relevant Articles of EC Treaty: Articles 10, 211, 226, 228, 234, 243 and 249.

Selected parts of Commission Staff Working Document on Preventing Breaches of and Addressing Specific Challenges in Implementing Environmental Law SEC (2008)2876 of 18.11.2008 (pp. 6-31) to provide students with an overview of the areas covered by the EU environmental acquis.

Additional Background Reading:


