

The *Abano* Ruling - a Breakthrough in Environmental Case Law *

A recent decision of the Lisbon Court of Appeal, confirming that construction works on a private development project which had been licensed by the relevant authorities could nonetheless be halted, suggests that environmental cases are finally being taken seriously by the Portuguese courts.

Facts

At the end of the 1990s the Portuguese authorities licensed the construction of a large development project, located in the Sintra-Cascais Site of Community Importance. The decision caused much controversy among environmental organizations, as it was argued that implementation of the project would have a devastating impact on the environment. In particular, the complex would damage the Sintra-Cascais Natural Park, and destroy the natural habitats and species that had led the park to qualify as a site of community importance.

National environmental non-governmental organizations thus spearheaded a legal battle intended to stop the development project.

The first step was to file an injunction to halt construction. The campaigners had two options: (i) to file the injunction in an administrative court, challenging the licensing process, which was the traditional approach taken in environmental cases; or (ii) to file the injunction in the civil courts, basing the case exclusively on breach of environmental laws, an option that had never been tried successfully.

Given the time which had elapsed, and the short statute of limitations in administrative matters, it was decided to build the case exclusively on the direct violation of environmental law and to file the injunction in the civil courts. The lower court took the traditional view and ruled against the campaigners. It held that the proceedings should have been brought in the administrative courts, as it was not possible to separate the environmental violations from the legality of the licensing.

However, after a series of appeals and counter-appeals, in a surprising and far-reaching decision the Lisbon Court of Appeal upheld the competence of the civil courts, by ruling that direct violations of environmental law are independent from the administrative licensing procedure. In other words, the right to a healthy environment can be enforced against constructions that have been licensed by the administrative authorities.

Legal Lessons

Two major legal lessons arise from the court's ruling, First, the legality of the administrative licensing procedure does not have to be challenged in order to have environmental rights enforced.

Second, legal proceedings can be brought in civil courts when the argument is exclusively based on direct violations of the environmental law.

Outlook

The ruling of the Lisbon Court of Appeal is final, and although under Portuguese law it does not bind the courts in future cases, it is most likely that a jurisprudential trend has been set down.

In order to confirm the existence of this trend, close attention should be paid to future decisions in similar cases. Of particular importance will be the main lawsuit associated with the injunction, which is still pending.

However, regardless of the immediate results, it is clear that a lot more attention will now be paid to environmental laws. People will no longer risk relying exclusively on the formal legality of an administrative licensing procedure in order to cover up environmental violations.

* *June 9 2003*