



Examples of cases with a focus on marine and coastal protected areas

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International Conference
"Applying EU Environmental Legislation in the Field of Marine Protection"

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Legal Procedures

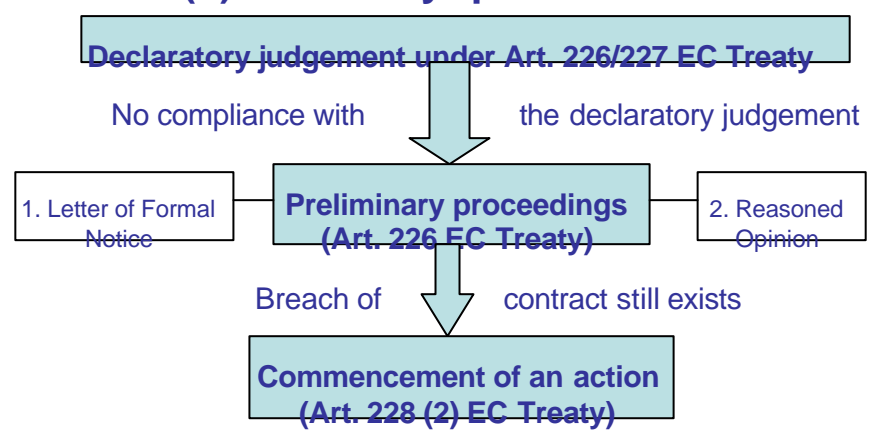
Legal action against a Member State

- ❖ Infringement procedure under Art. 226 EC Treaty
- ❖ Penalty procedure under Art. 228 (2) EC Treaty
- ❖ Preliminary ruling under Art. 234 EC Treaty

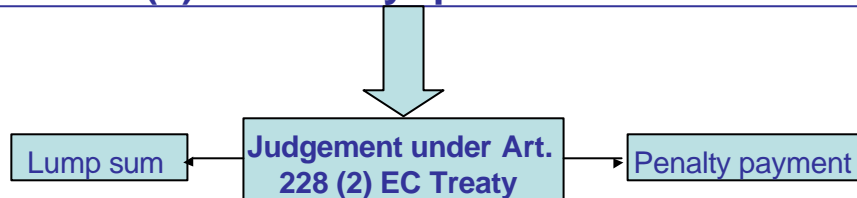
Legal action against acts/decisions of European Institutions

- ❖ Action for annulment under Art. 230 EC Treaty

Art. 228 (2) EC Treaty- procedure



Art. 228 (2) EC Treaty- procedure



- As of now, the Court sentenced only once (C-387/97) under Art. 228 (2) EC Treaty
- 31 December 2001: 20 proceedings were instituted in the environmental sector

Conclusions regarding legal procedures

- Art. 226 EC Treaty → most effective instrument
- Art. 228 (2) EC Treaty → as of yet, one judgement, bare threat of conviction is effective
- Art. 234 EC Treaty
 - ❖ Rationale: consistent application of Community law can be ensured in every Member State

Case “Kouroupitos river”

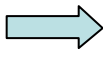
- **1987: First complaints to the EC by municipalities of the prefecture of Chania**
- **7 April 1992: First judgement of the Court under Art. 226 EC Treaty (C-45/91)**
 - ❖ **Failure to implement Directive 75/442/EEC on waste and 78/319/EEC on toxic and dangerous waste**
- **1995: Initiation of a new procedure under Art. 228 (2) EC Treaty by the EC**
- **14 November 1997: Action before the Court by an application of the Commission**

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Case “Kouroupitos river”

- **4 July 2000: Judgement of the Court** 
 - ❖ **No implementation of all necessary measures to comply with the first judgement and failing to fulfil the obligations under Art. 228 (1) EC Treaty**
 - **Only adaption of insufficient fragmentary legislation and ad hoc measures to ensure that waste is disposed of without endangering human health and without harming the environment**
 - **Failure to draw up waste management plans for the area**
 - ❖ **periodic penalty payment: €20.000/day from delivery of this judgement**

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Case “Kouroupitos river”

- **Measures that were taken after the judgement:**
 - ❖ Closing down of the Kouroupitos site in February 2001
 - ❖ Drawing up of a waste management plan for the area
 - ❖ Installation of temporary waste facilities until permanent installations could be constructed
- **Payments of Greece: €5.400.000 and the costs of the rehabilitation of the site**
- **Payments of the EU: Funding to build two waste installations**

Non-Judicial Remedies

- **Grievance to the European Ombudsman**
 - ❖ Art. 21 and 195 EC Treaty
- **Right of Petition**
 - ❖ Art. 21 and 194 EC Treaty
- **Complaint to the European Commission**
 - ❖ no regulation in the EC Treaty

European Ombudsman

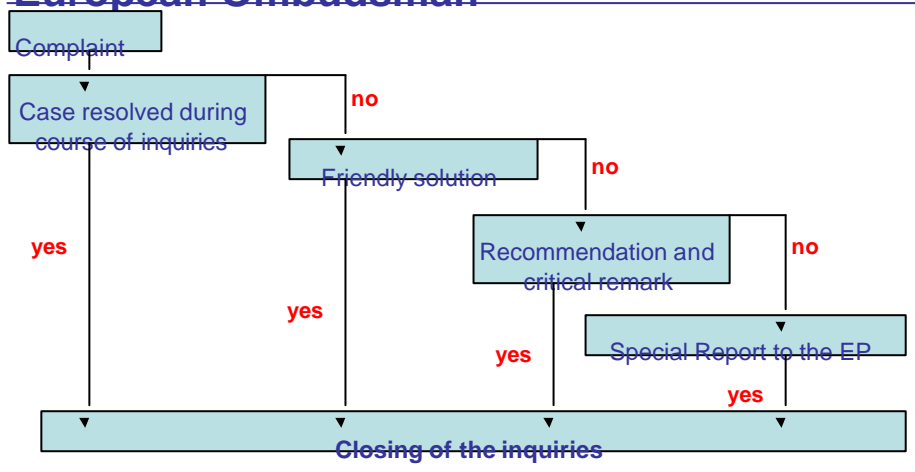
•Who can complain?

- ❖ Any EU citizen and natural or legal person residing or having a registered office in a MS

•Powers of the Ombudsman:

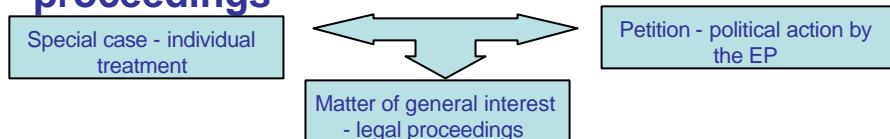
- ❖ Conducts inquiries on the basis of complaints but can also launch them through his own initiative
- ❖ European institutions and MS have the duty to supply the Ombudsman with requested information and to give him access to files

European Ombudsman



Right of Petition

- Who has the right to appeal?
 - ❖ Any EU citizen and natural or legal person residing or having a registered office in a MS that is **directly affected**
- no adequate competencies of the CoP itself
 - EC plays an important role in the further proceedings



Complaint to the European Commission

- Who can complain?
 - ❖ Every European citizen or association
- Proceedings:
 - ❖ sufficient indications of the complaint examination of the facts by the EC and consultations with the MS concerned →
 - ❖ decision whether to take legal action against the MS concerned

Conclusions regarding non-judicial remedies

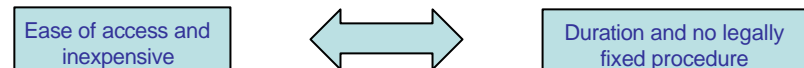
- **Ombudsman**

- ❖ On the basis of the complaints so far  not an attractive instrument in the environmental sector

- **Right on Petition**

- ❖ Petitions submitted to the CoP have served as a resource for informing the EC on the practical implementation of environmental law

- **Complaint to the EC**



Case "The coastal forests of Is Arenas"



- Is Arenas, Sardinia (Italy)
- 1000 hectares coastal dunes with mature vegetation which includes priority habitats
- Covered by the "Is Arenas" Site of Community Importance in accordance with Directive 92/43/EEC



Cutting down of trees, earth moving and flattening operations in the area



Plans to build tourist villages and hotels

Case “The coastal forests of Is Arenas”

- **Neither an environmental impact assessment nor any investigation as to whether such an assessment was needed**
- **21 April 2000: note by the Italian Ministry of the Environment to the authorities concerned:**
 - ❖ **to obtain the assessment certifications**
 - ❖ **to suspend the works within a fixed term of 7 days**

Case “ The coastal forests of Is Arenas”

- **Several complaints to the EC by the International Committee for Is Arenas’ Protection**
- **2000: the EC**
 - ❖ **blocked the Community funds requested for the real estate plan at Is Arenas**
 - ❖ **launched an infringement procedure (Art. 226 EC Treaty) with a Letter of Formal Notice**
- **9 February 2001: Reasoned Opinion**

Case “ The coastal forests of Is Arenas”

- **4 July 2002, communication of Margot Wallström that the case is being followed with the utmost attention by the DG Environment**

- **Thank you for your attention.**