Presentation:

“The effectiveness of wildlife protection in EU Law: derogations and exceptions under the birds and habitats directives”

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1.- INTRODUCTION: WILDLIFE PROTECTION AND NATURE PROTECTION: INTERACTIONS

2.- MAIN EU LEGAL RULES FOR THE PROTECTION OF NATURE/WILDLIFE

2.1.- The “wild birds” directive (WBD):
- Directive 79/409, on the conservation of wild birds
- Directive 2009/147 (codified version)

2.2.- The “habitats directive” (HD, 1992):
- Directive 92/43/ECC, on the conservation of natural habitats and of wild fauna and flora

2.3.- Basic content

- Setting up an ambitious and comprehensive system of wildlife protection
- Designation of “natural areas”
- Conservation of NA
- Improvement of NA
- Protection of wild species of flora and fauna
- Not disturbances
- Natura 2000

2.4.- Obligations of the MS vis-à-vis those rules
   2.4.1.- Transposition
   2.4.2.- Implementation
   2.4.3.- Enforcement
   2.4.4.- Long-standing and fertile case-law of the EJC:
   - Ruling of the ECJ of 25.11.1999, Commission v. France (Case C-96/98) (Marais de Poitevin)
   - Ruling of the ECJ of 30.1.2002, Commission v. Hellenic Republic (case C-103/00) (Wild turtles case)
   - Ruling of the ECJ 30.1.2002, Commission v. Greece, (case C-103/00) (Turtle Caretta)
   - Ruling of the ECJ 29.1.2004, Commission v. Austria (C-209/02) (Crex, crex)

3.- THE STANDARD OF PROTECTION OF THE EU RULES

3.1.- Absolute or relative standard?

3.2.- Protection open to “exceptions” and “derogations”

3.2.1.- “Derogations” under art. 9 WBD

3.2.2.- “Derogations” under art. 16 HD

3.2.3.- “Exceptional” permits in protected areas under art. 6.3-6.4 HD
- MS may authorise practices, activities or even economic or infrastructure “projects” within or in the vicinity of those protected areas
- Those projects may jeopardise the standard of protection for wildlife species in those areas
- Only possible for “imperative reasons of overriding public interest: Case-law of the ECJ (Commission v. Germany, Leybucht Bay, etc)

3.2.5.- Who grants them

- The MS authorities
- Under the control of the Commission

3.2.6.- The question of the necessary compensation

3.2.7.- Spanish legislation: art. 45, Spanish Act of Biodiversity 42/2007

3.3.- Legal controversy: a flexibility mechanism?
4.- LEGAL QUESTIONS STEMMING FROM THIS “FLEXIBILITY” MECHANISM

4.1.- How flexible can it be? What interests or governmental objectives may be taken into consideration?

4.2.- Is the legal regime of derogations and exceptions sufficiently clear and restrictive so as to avoid extensive interpretations and practices by the MS?

4.3.- How have these derogations and exceptions been implemented by the several MS?

4.4.- The role of courts in controlling those governmental decisions

- National courts
- EU Courts
  - General Court
  - Cour of Justice: *Commission v. Finland* (C-342/05, wolf hunting)
- Access to justice questions

4.5.- The role of the Commission and of NGOs in ensuring the right application of such exemptions

4.6.- The practice so far:
- The Case of Spain: number and types of derogations under art. 16 HD

4.7.- Some interesting recent case-law on art. 6.4 HD:

  - The concept of “project”
o The concept of “adequate assessment”

o Comments

5.- CONCLUSIONS: A BALANCE

1.- Is there a real danger of a serious loophole in the whole system of wildlife protection in the Union?

2.- How effective the whole system is, in view of the exceptions?