THE EVOLUTION OF JUDICIAL REVIEW IN THE FIELD OF EU CLIMATE AND ENVIRONMENTAL POLICY

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The article is devoted to a comprehensive study of the legal positions of the Court of Justice of the European Union in key cases that form the modern doctrine of EU environmental and climate law: "C.Z. and Others v. Ilva SpA", "Arcelor Atlantique et Lorraine v. Premier Ministre", "Air Transport Association of America v. Secretary of State for Energy and Climate Change", "Carvalho and Others v. Parliament and Council" ("People's Climate Case"), "Commission v. Poland". A comparative analysis of the approaches applied by the Court of Justice of the EU to determining the scope of obligations of EU Member States and EU institutions in the field of environmental and climate protection; the balance between political discretionary powers and judicial review; the application of the principles of proportionality, equality, effective judicial protection and the application of the Charter of Fundamental Rights of the EU in causing environmental damage has been carried out. It has been established that the approaches of the Court of Justice of the EU on these issues have evolved.

The study shows that the Court of Justice of the EU has consistently extended the direct effect of the directives on industrial emissions and the right to a healthy environment within the framework of Articles 35 and 37 of the Charter of Fundamental Rights of the EU; recognizes the broad discretion of the EU legislator in developing carbon policy; specifies the spatial limits of the application of EU law; sets the limits of access of individuals to court in climate cases.

The article comprehensively analyzes the decisions of the Court of Justice of the EU in the cases of "C.Z. and Others v. Ilva SpA", "Arcelor Atlantique et Lorraine v. Premier Ministre", "Air Transport Association of America v. Secretary of State for Energy and Climate Change", "Carvalho and Others v. Parliament and Council" ("People's Climate Case"), "Commission v. Poland" and shows that they constitute a single evolutionary line, demonstrating the gradual formation of "European environmental constitutionality", and the Court of Justice of the EU acts as the architect of the balance between the political goals of sustainable development, economic interests and the rights of EU citizens.

The following trends have been identified: a shift in emphasis from "purely administrative" control to the concept of environmental responsibility of EU Member States and economic entities before society; the EU Court of Justice is gradually developing the concept of "environmental constitutionality" of the EU, where environmental and climate norms acquire a quasi-constitutional status (similar to the principles of the rule of law and proportionality). It has been established that at present this constitutionality is institutionally and asymmetrically characterized: it is strong in the material (substantive) dimension, but weak in the procedural (standing, access to court). Further development will depend on whether the EU Court of Justice or the legislator can reduce the gap between "environmental declaration" and "environmental justice".

Keywords: Court of Justice of the European Union, EU environmental law, industrial emissions, emissions trading system, climate policy, access to justice, proportionality principle, extraterritoriality, climate change, human rights, EU citizens, judicial protection, public law of EU member states, sources of EU law, damage, access to court.

Problem Statement

Environmental protection and climate policy have become key challenges for the modern European legal order. The growth of industrial emissions, climate change and environmental degradation force the Member States of the European Union not only to adopt a sustainable development policy, but also to ensure its effective implementation through judicial control. The Court of Justice of the EU plays a doubly important role in this process: on the one hand, it guarantees the direct application of environmental law and directives, and on the other hand, it limits interference in the legislative discretion of the states and EU institutions. It is this tense balancing position that forms the new doctrine of "environmental constitutionality", in which judicial decisions combine the protection of human rights, the regulation of industrial activity and climate policy.

The Court of Justice of the EU plays a central role in ensuring the legal regulation of environmental policy and climate obligations. Its jurisprudence demonstrates the gradual formation of the concept of "environmental constitutionality", where the principles of sustainable development and the prevention of environmental damage become key. The Court of Justice of the EU ensures the direct effect of directives and the application of the principles of the Charter of Fundamental Rights in specific disputes between EU citizens and industrial enterprises, assesses legislative and executive decisions on their compliance with environmental policy objectives without interfering in political discretion, and defines the limits of access to justice for citizens and organisations in climate and environmental cases. The Court of Justice of the EU establishes a balance between the economic interests of states and enterprises and the need to protect the environment and human rights.

Judicial review in this area is therefore particularly important, as it sets precedents, defines the limits of public policy and contributes to the implementation of citizens' rights to a safe environment.

Scientific development

Scholars studying climate justice in Europe are laying important conceptual foundations for understanding the role of law in the fight against climate change. In particular: Joana Setzer examines climate claims through the lens of human rights, establishing a conceptual framework for understanding how legal mechanisms can ensure climate justice [1]. Christina Eckes demonstrates the potential of EU law in national courts, forming a basis for the strategic use of EU regulatory instruments in climate disputes [2]. Maxim Bönnemann and Tiffanie Chan analyze the transformation of European climate justice, creating a conceptual framework for assessing innovations and trends in law enforcement [3; 6]. Annalisa Savaresi and Ekaterina Aristova emphasize the role of international law and climate claims against states and corporations, laying down methodological approaches to the analysis of causal relationships and legal strategies [4; 5].

The emergence of climate claims against states and corporations, the concept of the "right to climate", as well as issues of environmental justice pose new challenges to the judiciary related to the evidentiary base, international norms and human rights priorities.

Presentation of the main material

The case of C. Z. and Others v. Ilva SpA in Amministrazione Straordinaria (CJEU, Grand Chamber, 25 June 2024) [7] concerned a situation where a large steelworks in Taranto (Italy) had been linked for many years to significant industrial pollution and claims of impact on the health of the local population. The case was referred by the Tribunale di Milano in the form of a request for a preliminary ruling (Article 267 TFEU). The main questions concerned the interpretation of Directive 2010/75/EU on industrial emissions (hereinafter referred to as the IED), the procedures for granting/reviewing permits, and the balance between environmental/health protection and the rights of undertakings; the request also referred to the articles of the Charter (Articles 35, 37).

The claimants (residents) argued that the national procedures and decisions on the permit for the operation of the plant were insufficient to adequately protect the environment and health and could fail to take into account the requirements of the IED, Article 191 TFEU and the provisions of the Charter. The plant

owners and the national authorities stressed the need for sound administrative procedures, the need to balance economic interests and a "causal link" between the source of the emissions and the specific damage.

The CJEU confirmed that the IED and related TFEU provisions impose specific obligations on Member State authorities to ensure an adequate level of protection of the environment and health when granting and reviewing permits for activities likely to cause significant emissions. The CJEU recognised that national courts, when deciding civil/administrative disputes, can and must take these EU requirements into account when reviewing national decisions on permits; at the same time, the CJEU stressed the boundaries (between industrial activity and the protection of third party rights) and the need for a proper balancing of competing interests. The CJEU also drew attention to the possibility of referring to the provisions of the Charter (the right to a healthy environment in conjunction) when interpreting the obligations of Member States in the field of prevention and limitation of harmful emissions, but did not transform the Charter into an instrument by means of which it would be possible to automatically obtain compensation for damage without taking into account procedural conditions (standing, causation, proof).

The CJEU has thus clearly integrated the IED into national administrative and judicial review procedures, which strengthens the applicability of EU environmental standards in public health matters. Recognizing the role of national courts in the application of EU rules gives victims more effective access to justice in the context of industrial emissions. At the same time, the CJEU refrained from creating "new" autonomous rights to compensation based solely on the Charter, which reduces the expectations of activists for swift judicial protection on the basis of human rights.

This judgment of the Court of Justice of the European Union has significantly strengthened the requirements for national procedures for proper risk assessment in permits; it has become a potential incentive for States and operators to improve environmental standards and impact assessment procedures. The legal position of the Court of Justice of the European Union is that the IED and the principles of health/environmental protection require an active role for national authorities and courts in the granting/reviewing of permits.

In the case of Société Arcelor Atlantique et Lorraine and Others v. Premier ministre (CJEU, Grand Chamber, 16 December 2008) [8] Arcelor (steel industry) challenged the interpretation and application of Directive 2003/87/EC (the Emissions Trading Scheme – hereinafter ETS) concerning the inclusion of steel plants in the range of regulated installations; the issue of the scope of the Directive and the principle of equal treatment between sectors.

Arcelor alleged discrimination between the steel sector (included in the ETS) and other sectors (chemicals, non-ferrous metals). The government stressed that the choice of sectors and inclusion criteria stemmed from the objectives of the Directive, the technical characteristics of the activity and the powers of the EU.

The CJEU confirmed the right of the EU legislator to set the criteria for the inclusion of installations in the ETS on the basis of objective and transparent criteria, but checked for a breach of the principle of equality/due motivation. The CJEU applied the traditional principles of proportionality and equal treatment: the State/legislator must justify the choice of sectors/criteria, but the court does not replace the assessment of the legislator's policy if the decision is based on objective criteria.

In this case, the CJEU emphasised that the EU has broad competence to regulate the common market in the context of climate regulation and limited judicial review of policy decisions if they have a clear technical basis. The decision gives EU Member States and the EU legislator considerable discretion in shaping sectoral ETS rules, but this can create political and competitive tensions between sectors and EU Member States.

The decision has sparked further debate about the balance of equity/discretion in EU environmental policies and has influenced subsequent ETS cases.

In the case of Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change (CJEU, Grand Chamber, 21 December 2011) [9] the issue of including aviation in the ETS emissions trading

scheme (through Directive 2008/101/EC) was raised: whether the EU could apply the ETS to flights operated outside the EU territory (extraterritoriality) and whether this was contrary to international law (Chicago Convention, bilateral agreements).

The claimants (US airlines and associations) insisted that the ETS was contrary to international obligations and infringed the sovereignty of a third country. The airlines considered that the ETS could not apply to parts of flights outside EU airspace; this was contrary to the Chicago Convention and international rules on sovereignty in the air. The UK government considered that the approach was achieved through directive mechanisms and that the EU had the right to regulate the conditions for providing commercial activities on its territory (including requirements for operators doing business in EU airspace).

The Court of Justice of the EU rejected the claim of absolute incompatibility with international law; it recognised that regulation of the ETS within the European territory (including measures for parts of a flight starting/ending outside the EU) could be permissible under certain conditions. The Court of Justice of the EU also emphasised the possibility of harmonising EU obligations with international law; the issue of extraterritoriality being considered through the prism of intra-European competence and the objective of climate protection.

The decision in the case of Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change strengthened the EU's position on the regulation of activities taking place partly in its airspace and clarified under what conditions transnational operations could fall under EU regulation. At the same time, this decision generated international controversy (especially from the USA) and stimulated further agreements/exclusions. Overall, the decision of the Court of Justice of the EU became the legal basis for further regulation of aviation emissions in the EU and for the development of international negotiations on the distribution of regulatory powers in the field of climate. In the case of "Armando Carvalho and Others v Parliament and Council" (People's Climate Case) (CJEU, judgment 25 March 2021; General Court earlier) [10], citizens challenged acts of the European Parliament and the Council, arguing that the regulation (in the context of climate policy) did not meet the requirements of the protection of human rights (the Paris Agreement) and that the legislative acts did not provide the necessary level of emission reductions to protect fundamental rights. The claimants argued that the EU acts undermined the right to life/health/prosperity and that the EU institutions should have set more ambitious targets/measures. The respondents emphasised the political division of powers, the procedural framework for the adoption of acts, as well as the balance of powers and the principle of proportionality.

The CJEU drew attention to the procedural barrier for private applicants seeking to directly challenge political-regulatory decisions on the basis of expected climate impacts. The General Court declared the application for annulment inadmissible, and the Court confirmed this position on appeal. The Court emphasised that EU climate policy is a complex political process in which courts cannot simply replace political decisions unless specific established legal grounds are violated (e.g. a clear breach of procedural rules or competence).

The CJEU therefore maintained a reasonable line between judicial review and the political discretion of the institutions, thereby avoiding the "politicisation" of judicial review in climate policy matters. This judgment highlighted a structural problem with access to the EU Court by private individuals in the area of major political decisions; stimulated discussions on alternative strategies.

The ECJ in the case of Commission v. Poland stresses that Member States are obliged to submit national energy and climate plans and to ensure their implementation [11]. The ECJ confirmed that failure by Member States to comply with their obligations undermines the rule of law and the effectiveness of EU law. The judgment shows that States have direct obligations towards the EU. For EU Member States, this means: the need to clearly define the liability of public authorities for failure to implement national energy and climate plans; the creation of legal procedures for citizens and businesses to challenge negligent or untimely actions of public authorities in the field of energy and cli-

mate; the integration of European control and monitoring procedures into national energy policy management mechanisms.

Conclusions

In the cases of C. Z. and Others v. Ilva SpA in Amministrazione Straordinaria and Société Arcelor Atlantique et Lorraine and Others v. Premier ministre, the CJEU demonstrates its willingness to interpret technical directives (IED/ETS) in such a way as to ensure real standards of environmental protection, while respecting the political discretion of the legislator (Société Arcelor Atlantique et Lorraine and Others v. Premier ministre) and the competences of national authorities (C. Z. and Others v. Ilva SpA in Amministrazione Straordinaria).

In the People's Climate Case, the CJEU demonstrates a major procedural obstacle to direct challenges to EU policy. C. Z. and Others v. Ilva SpA in Amministrazione Straordinaria shows that, where specific permits and health impacts are at stake, national courts and the CJEU can be an instrument of protection. That is, the effectiveness of judicial protection depends on the formulation of the claims.

The decision in the case of Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change is a key precedent on the EU's ability to regulate transnational aspects of activity (air flights), emphasizing the need for consistency with international law but confirming intra-European competence. This is an important clarification for policies that have a cross-border nature.

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ЕВОЛЮЦІЯ СУДОВОГО КОНТРОЛЮ У СФЕРІ КЛІМАТИЧНОЇ ТА ЕКОЛОГІЧНОЇ ПОЛІТИКИ ЄС

Стаття присвячена комплексному дослідженню правових позицій Суду Європейського Союзу у ключових справах, що формують сучасну доктрину екологічного та кліматичного права ЄС: «C.Z. and Others v. Ilva SpA», «Arcelor Atlantique et Lorraine v. Premier Ministre», «Air Transport Association of America v. Secretary of State for Energy and Climate Change», «Carvalho and Others v. Parliament and Council» ("People's Climate Case"), «Commission v. Poland». Здійснено порівняльний аналіз застосованих Судом ЄС підходів до визначення обсягу зобов'язань держав-членів ЄС та інституцій ЄС у сфері захисту довкілля і клімату; балансу між політичними дискреційними повноваженнями та судовим контролем; застосування принципів пропорційності, рівності, ефективного судового захисту та застосування Хартії основних прав ЄС при спричиненні екологічної шкоди. Встановлено, що підходи Суду ЄС щодо цих питань еволюціонували.

Дослідження показує, що Суд ЄС послідовно розширює пряму дію директив про промислові викиди та право на здорове довкілля в рамках статей 35 і 37 Хартії основних прав ЄС; визнає широку дискрецію законодавця ЄС з розробки політики вуглецевого регулювання; конкретизує просторові межі застосування права ЄС; встановлює межі доступу приватних осіб до суду в кліматичних справах.

У статті комплексно проаналізовані рішення Суду ЄС у справах «C.Z. and Others v. Ilva SpA», «Arcelor Atlantique et Lorraine v. Premier Ministre», «Air Transport Association of America v. Secretary of State for Energy and Climate Change», «Carvalho and Others v. Parliament and Council» ("People's Climate Case"), «Commission v. Poland» та показано, що вони становлять єдину еволюційну лінію, що демонструє поступове становлення «європейської екологічної конституційності», а Суд ЄС виступає архітектором балансу між політичними цілями сталого розвитку, економічними інтересами та правами громадян ЄС.

Виявлені такі тенденції: зміщення акценту від «чисто адміністративного» контролю до концепції екологічної відповідальності держав-членів ЄС і суб'єктів господарювання перед суспільством; Суд ЄС поступово формує концепцію «екологічної конституційності» ЄС, де екологічні та кліматичні норми набувають квазі-конституційного статусу (подібного до принципів верховенства права та пропорційності). Встановлено, що наразі ця конституційність поки має інституційно-асиметричний характер: вона сильна в матеріальному (змістовному) вимірі, але слабка в процесуальному (standing, доступ до суду). Подальший розвиток залежатиме від того, чи зможе Суд ЄС або законодавець зменшити розрив між «екологічною декларацією» і «екологічною юстицією».

Ключові слова: Суд Європейського Союзу, екологічне право ЄС, промислові викиди, система торгівлі викидами, кліматична політика, доступ до правосуддя, принцип пропорційності, екстериторіальність, зміни клімату, права людини, громадяни ЄС, судовий захист, публічне право країн-учасниць ЄС, джерела права ЄС, шкода, доступ до суду.