

## Case: "Precious Old Rhino Horn"

**Training module under project "Co-operation with national judges in the field of environmental law under the European Commission Framework Contract ENV.A.I/FRA/2012/0018" on**

### **HOW TO ENFORCE EU LEGISLATION ON BIODIVERSITY AND WILDLIFE TRAFFICKING**

Melanie Claimant (Mel C) inherited a rhino horn from her deceased father Walter. The rhino horn has been in the family since the late 19<sup>th</sup> century. At the time grandfather Fritz was in South-West Africa. In 1906 he brought the rhino horn to Germany as a hunting trophy. The rhino horn is mounted on a wooden plaque. It is 42 centimeters long with a weight of 1 kilo.

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To be honest, Mel C hates it and wants to sell this relic of another era as fast as possible. She went to an auction house in Heidelberg and was surprised to learn about the market price ("15.000 Euro or even more"). However, the auction house refused to sell the horn for her without a "proper certificate".

Mel C filed an application to obtain a certificate for "intra-Union trade of rhinoceros horns".

The competent authority of Member State refused to grant the requested certificate on the following grounds:

- Intra-EU trade of Annex A specimens is strictly prohibited, cf. Article 8 (1) of Council Regulation (EC) No 338/97.
- In former years derogations from this prohibition were accepted if the conditions listed in Article 8(3) subparagraphs (a) to (h) of Regulation No 338/97 were met.
- However, from now on derogations will not be granted anymore. This change of administrative practice reflects the discretion which is conferred to the Member States by Article 8 of Regulation No 338/97. The new line of using this discretion is based on a recent Guidance Document of the EU Commission saying:  
"Illicit trafficking of rhino products (especially horns) is one of the main threats for the survival of the species. In 2007 just 13 rhinos were illegally killed in South Africa,

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however over the past eight years rhino poaching has dramatically escalated, with 1004 rhinos poached during 2013, 1.5 as high as 2012. Between January and April 2014, 294 rhinos have been illegally killed in South Africa.”

Mel C has brought an action to the Administrative Court and claimed:

- The refusal of issuing the requested certificate is manifestly illegal.
- The rhino horn originates from the 19<sup>th</sup> century and has been in the family since 1906.
- The public authority misses the obvious point that the purchase of the rhino horn in question qualifies for a at least three derogations which are explicitly mentioned in subparagraph (a), subparagraph (b) and subparagraph (c) of the said Article 8 (3).

Mel C claims that the Court should,

annul the contested refusal and oblige the defendant (public authority) to issue the requested certificate.

The public authority claims that the Court should,

dismiss the action.

The defendant refers to the reasoning in the contested decision and makes a procedural remark: if the court has any concerns as regards the exercise of discretion, the defendant will be more than happy to receive a preliminary legal advice by the court in order to – if necessary at all – “heal” the contested decision.

**Is the lawsuit well-founded?**

1. Can Mel C invoke a derogation under Article 8(3)?
2. Is there a margin of discretion involved?
3. If so, did the public authority make a correct use of its discretion?
4. Is it possible for the court to give a preliminary legal advice?
5. Is the contested refusal to be annulled?
6. If so, can the Court give an order to issue the certificate?

As regards procedure and the intensity of judicial control, feel free to give an input on domestic laws and jurisprudence.

**I am looking forward to our discussion!**