

Lund University Faculty of Law

From the Selected Works of Evgenia Pavlovskaja

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Short Summaries of Two Main Speeches

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Understanding Responsibilities and Knowledge
in Environmental Risk Regulations
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Short summaries of two main speeches; referee assignment

Nicolas de Sadeleer:

The Issue of the Review of Precautionary Measures Taking in Face of Scientific Uncertainty

The speech was based on an overview of the relevant EU case-law from the General Court and the Court of Justice. The central question that was highlighted concerned the space left to the Commission and Council to determine how safe is safe. Among the latest examples, a judicial review of precaution measures from the Encephalopathy Spongiform Transmissible case from the 6th September 2011 was discussed. The questions raised in the case were complex and dealt with conflicting interests, values and objectives. The role of the Commission as a law-maker, and the role of the Court as a decision-maker were underlined.

Another example was from the 1991 case of the Technical University of Munich, where an examination measure was in focus. Internal and external legality of the contested measure were reviewed. The Court held that within the frames of the internal legality, the contested measure could be quashed only on the grounds of a manifest error of appraisal or a misuse of powers. As regard the external legality, the contested measure can be nullified on the grounds of a wrong statement of reasons and infringements of procedural steps.

From the case of Solvay Pharmaceutical, an idea of zero risk and zero tolerance was mentioned with a commentary that zero risk is impossible to achieve.

A conclusion was made that the EU case-law was tricky, requiring extra scientific evidence and originating controversial opinions. Subordination of powers was clear. The case-law placed limits on decision-makers. The principle of proportionality was touching the principle of precaution. In cases on health, the protection of health prevailed over economic considerations. The Court was stressing that measures were temporal.

Knowledge Needed for Climate Adaptation in Forestry

In the presentation, possible positive and negative effects of climate change on forest in Sweden, as well as the position of the Swedish Forest Agency on this issue were discussed. Importance of other values than strictly economic was highlighted, including biodiversity protection and social factors. Examples from earlier research on climate and vulnerability were provided that considered infrastructure, water supply, agriculture, forestry, reindeer keeping and human health. Among the negative impacts of climate change, the possibility of more damage was mentioned caused by more storms, warmer wetter winters and arrival of new insects. Suggestions for future forestry adaptation were based on evaluation and possible modifications in the relevant legislation, development of sustainable biofuel production, increased information towards forest owners, improved strategies for protecting biodiversity and more efficient monitoring/reporting of damages. The need for further research from different disciplines, analysis on alternative action strategies from economic and other perspectives, as well as considering private interests of forest owners were underlined.

Written by Evgenia Pavlovskaja