



The Environmental Justice Moot Court 2024
(EJMC 2024)



European Commission vs. Padinas,
C-278/23

Padinas is bounded to the west by river Datmars (in the Kavalis Region), a channel to the Grey Sea. It is bounded to the north and east by the People's Republic of Avedonia, and to the south by the Principality of Ravis. It achieved statehood in 1980, when a peaceful revolution led to the formal division of the Confederacy of Avedonia into Padinas and the People's Republic of Avedonia. Weeks earlier, the legislative body representing the canton of Padinas had issued a proclamation stating that "[i]n conformity with international law and to the extent defined by it, Padinas considers itself bound, as of the date of the dissolution of the Confederacy of Avedonia, by treaties to which the Confederacy of Avedonia was a party on that date". Padinas ratified the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR) in 1981, the United Nations Convention on the Law of the Sea (UNCLOS) in 1989, and the The Council of Europe's Convention on the Conservation of European Wildlife and Natural Habitats or the so called Bern Convention in 1991. It became a Member of the United Nations (UN) in 1996, and a Member of the Organisation for Economic Cooperation and Development in 2000 and an EU member in 2006. Its head of state is President Athena Abivis.



In December 2007, the Kavalis region was established as a Special Protection Area SPA, yet the protection area covered only two-thirds of the territory previously designated as an Important Bird and Biodiversity Area (IBA) by BirdLife International. To its west, the Latkis SPA was set up. The Kavalis IBA is of fundamental importance for a number of bird species and is home to over 300 bird species, 95 of which are listed in Annex I of the Birds Directive, over 120 are of European concern in terms of conservation and 17 are under threat on a global scale. The Kavalis IBA further “holds the last big and comparatively well-preserved steppe habitat in the region” and the biggest cliffs along the Grey Sea Coast. As the site is located on the Via Datmaris, the second biggest migration flyway in Europe, the region is also of exceptional importance for migratory birds as every autumn large numbers of birds, including globally threatened species - especially violet-wild peacock (species of birds listed in Annex I to the Birds Directive) - pass over Kavalis which reaches furthest into the sea in that region. Taking into account the environmental importance of this region, Padinas Society for the Protection of Birds (PSPB) proved to be very active in the field.

In May 2010, Padinas started developing in Kavalis region, through a private company (state sponsored- main sponsor- President Athena Abivis), Energos, the establishment of wind farms-Projects - Energy4all, in order to counter the energy crisis its population had been facing in the past few years. However, the projects had been approved in 2005, before EU accession and even in discussion before the formal state division. Furthermore, Padinas argues that the establishment of wind farms represents also a measure to protect the environment, since GHG emissions during the operation phase are negligible for wind turbines. Lastly, they use a non-metallic ‘dolly’ between the hammer and the driving helmet for the wind turbines.



For the Avincis, Marmaris and Esakis windfarms, all located in the Kavalis SPA, PSPB identified the destruction and deterioration of steppe habitats, barrier effects, bird collision and large-scale displacement as the main impact for the period of 2018-2022, due to the global warming effects. The three farms have been operational since 2015. For all three wind farms, no attempts to relocate them at an alternative location have been made.

PSPB argued for years on the negative potential effect of windfarms. All such turbines disrupt natural airflow to extract energy from wind. To investigate potential effects of a wind farm that includes thousands of windmills, PSPB used a detailed climate model based on wind speeds, temperatures, and ground-level evaporation in north-central Oklahoma during a 2-week period in July 2018. The simulation suggests that during the day, while sun-induced convection handily mixes the lower layers of the atmosphere, such a wind farm wouldn't have important climatic effects. In predawn hours, however, when the atmosphere typically is less turbulent, a large windmill array could influence the local climate. For example, at 3 a.m., the average wind speed at ground level was 3.5 meters per second (m/s) in the absence of windmills. Adding the wind farm would increase the average wind speed to 5 m/s. Also, the 10,000 windmills would increase the temperature across the area by about 2°C for several hours. Consequently, it would take 100 years for the savings in greenhouse gas emissions from all those windfarms to counteract this warming, according to researchers' estimations.

Furthermore, PSPB referred to the Communication of the European Commission "*Lives in Dignity: from Aid-dependence to Self-reliance*" and the Council Conclusions on forced displacement, both addressing climate change as an aggravating factor forcing even more people to flee, arguing that the climate change, due to the warming of the atmosphere, is affecting Padinas' population.



After complaints by PSPB regarding the insufficient scope of the area covered by the Kavalis SPA and the adverse effects of several wind farm projects on the protected habitats on climate change, the Commission, pursuant to Article 258 TFEU, sent a letter of formal notice in June 2018. Padinas replied in late November 2019 and informed the Commission that the projects listed by it had been, for the most part, approved before that Member State's accession to the European Union, with the result that EU law was not applicable to those sites and thus argued that it did not breach any environmental obligation as such. Padinas also argued that the windfarms ensure its population energy, since the country has faced serious issues in generating electricity and population displacement from that region to other countries. Furthermore, since its separation from the Confederacy, it faced serious financial difficulties. Also, Padinas contended that an environmental impact assessment (EIA) has been conducted by the Energos company, also assessing the cumulative effects of the wind farm projects in the area and the effects on the environment caused by the combined action of past, current and future activities, and it showed that it did not pose any serious harm to the environment. Finally, Padinas argued that according to several data, namely the report of the International Birds' Protection Agency (IBPA), it appears to be a loss of attractiveness of the Kavalis area, since they show that violet-wild peacock uses the site less often than in the past and it prefers other areas.

A second and third letter was sent in December 2019 and September 2021. On 30 January 2022, Padinas, on the basis of additional information, informed the Commission that it had taken a series of measures designed to correct the shortcomings identified, such as reducing to 30% the activity of the windfarms and temporary curtailment.



Not satisfied with Padinas' responses, the Commission, on August 2023, brought the present action, by which it seeks a declaration from the Court that Padinas did not respect its obligations on environmental protection- under Article 4(1), (2) and (4) of the Birds Directive, Article 6(2), (3) and (4) of the Habitats Directive and the combined provisions of Articles 2(1) and 4(2) and (3) of Directive 2011/92 and of Annex III thereto:

- 1. by failing to include all the territories of the important bird areas (IBAs) in the special protection area (SPA) covering the Kavalis region, the Padinas has failed to classify as a special protection area the most suitable territories in number and size for the conservation, first, of the biological species listed in Annex I to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7) ('the Birds Directive') and, secondly, of the regularly occurring migratory species, not listed in that annex, in the geographical sea and land area where that directive applies, and accordingly has failed to fulfil its obligations under Article 4(1) and (2) of that directive;
- 2. by approving the implementation of the projects 'Energy4all, -Avincis, Marmaris and Esakis' in the territory of the IBA covering the Kavalis region ('the Kaliakra IBA') which was not classified as an SPA, although it should have been, Padinas has failed to fulfil its obligations under Article 4(4) of the Birds Directive;
- 3. by approving the implementation of the projects 'Energy4all, -Avincis, Marmaris and Esakis' in the territories of the Kavalis SPA, Padinas has failed to fulfil its obligations under Article 6(2) of Council Directive 92/43/EEC of



21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) ('the Habitats Directive');

- 4. by failing to assess properly the cumulative effect of the projects 'Energy4all', 'Avincis, Marmaris and Esakis the implementation of which, in the territory of the Kavalis IBA which was not classified as an SPA, although it should have been, was approved by Padinas, that Member State has failed to fulfil its obligations under the combined provisions of Articles 2(1) and 4(2) and (3) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1) and point 1(b) of Annex III to that directive.

USEFUL LINKS

[Life cycle greenhouse gas emission from wind farms in reference to turbine sizes and capacity factors - ScienceDirect](#)

[EU Environment and Climate Change Policies. State of Paly, current and future challenges \(europa.eu\)](#)

[European Climate Law \(europa.eu\)](#)

[Latest EU policy actions on climate change - Consilium \(europa.eu\)](#)