

# **Climate change as justification of projects harmful to the environment**

Austria: Construction of the hydroelectric power plants Gössendorf and Kalsdorf

Case Study

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### Austria: Construction of the hydroelectric power plants Gössendorf and Kalsdorf

#### Case Study

#### I. Description of the project:

The above mentioned case is about the **construction of two run-of-river hydroplants at the Mur river - Gössendorf and Kalsdorf (in the south of Graz)**. Main purpose of the whole project is the emission-free power generation by domestic hydropower.

#### 1. Procedural timeline:

	<b>Applicant/Authority/Claimant</b>	<b>Case reference</b>	<b>Date</b>
<b>Project Application</b>	Stewag-Steg GmbH		02.06.2006
<b>First instance decision</b>	Styrian Government	FA13A-11.10-15/2010-15	14.03.2008 <sup>1</sup>
<b>Appeal with the US<sup>2</sup></b>	Naturschutzbund Styria WWF Austria Greenpeace CEE Umweltdachverband Styrian Ombudsman for the Environment et al.		
<b>Dismissal</b>	Independent Environmental Tribunal	US 8A/2008/15 - 54	23.12.2008
<b>Extraordinary remedy with the Administrative Court</b>	Naturschutzbund Styria WWF Austria Greenpeace CEE et al.		
<b>Dismissal</b>	Administrative Court	2009/07/0038	28.01.2010

<sup>1</sup> FA13A-11.10-15/2008-10

<sup>2</sup> Independent Environmental Tribunal

## II. Main legal arguments raised:

### 1. Appellate Procedure

#### 1.1 Appellants

The appellants raised objections (both in the first instance and appellate procedure) against the planned power plants based on their negative impacts on the environment:

- The project will be situated in a **“factual conservation area”** – the first instance authority did not take into account arguments on **wildlife protection** in its assessment (no compliance with the Fauna-Flora-Habitat Directive)
- Furthermore an **assessment of possible alternatives** in accordance to the Styrian Nature Protection Act – as a **protected landscape is affected by the project** – has not been carried out.
- An authorization according to Art 104a Water Management Act (**exception of the prevention of deterioration**) is not justified.

#### 1.2 Independent Environmental Tribunal

Regarding **climate change** main legal arguments of the Independent Environmental Tribunal were raised in connection with the exception from the principle of prevention of deterioration of surface waters.

The **Water Framework Directive** requires the **prevention of deterioration** of the status of all bodies of surface waters, and states the aim of the **preservation of the good ecological condition** of all bodies of surface water (cp. Art 30a Water Management Act). An aggravation of the water quality of the Mur river caused by the construction of hydroelectric power plants needs to be justified beneath others by the existence of **predominant public interests** (cp. Art 104a Water Management Act). A balance of interests was conducted by the Independent Environmental Tribunal. Mainly the following arguments were raised:

- The overall increase in energy consumption creates further necessities to cover the demands of the public. So **efficient power generation** facilities based on renewable energies (such as hydroelectric power plants) **securing energy supply is in public interest**.
- Furthermore an **increase in green electricity** produces positive ecological consequences due to the **avoidance of CO2 emissions**.
- The project contributes to the implementation of the **Styrian Energy Plan 2005-2015** supporting the completion of the **aims stated by the Kyoto Protocol** - the two hydroelectric power plants Gössendorf and Kalsdorf contribute by a significant reduction in CO2 emissions (comparison with emissions of coal-fired power plants). The Styrian Energy Plan 2005 – 2015 explicitly refers to the **importance of hydropower at the Mur river for the implementation of the Water Framework Directive**.

- The importance of the respective projects was highlighted also in the light of the regional action plan “**Energy and Climate Protection**”, the **European “Climate and Energy Package 2008”**.

**The above stated arguments were used to substantiate sufficient public interests for the construction of the hydroelectric power plants – The CO2 reduction goals and the increase in renewable energies are with respect to the combat of climate change prevailing national and European goals.**

## **2. Extraordinary Remedy**

### **2.1 Appellants**

The appellants filed a complaint with the Administrative Court mainly arguing that

- the operation of the planned hydroelectric power plants covers only 1,7% of the Styrian energy demand and 0,28% of the Austrian demand. **The expansion of renewable energies is not to be considered as an end to itself** – two thermic power plants with a multiple efficiency factor are operating within the immediate surroundings of the project sites – so no superior interests for the construction of the respective power plants can be shown.
- Furthermore the Mur floodplains are counted among the biggest connected floodplains in Austria and conservation-worthy.

### **2.2 Administrative Court**

The Administrative Court underlines the above stated arguments raised by the other instances:

- A **general public interest** exists for the **use and expansion of hydropower** in the sense of a "consumer oriented" establishment of efficient and at the same time "CO2 free" energy supply.
- **Climate change** and therefore also actions contributing to this aim, state a **particularly important public interest**.

## **III. Content of the final decision:**

The Administrative Court rejected the arguments raised by the appellants (see above II.)

The construction works started already with August 2009 – the Administrative Court had not granted suspensive effect to the complaint.

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